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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 410.

J. M. SCOTT, M. T. HOLLEY, Sr., E. C. BEACH, AND R. M. GARDNER, APPELLANTS,

vs.

JAMES DONALD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JANUARY 17, 1896.

(16,147.)

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1 *Caption.*

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

At a circuit court of the United States for the fourth circuit, in and for the district aforesaid, begun and holden at Greenville, South Carolina, on the first Monday in August, 1895, and adjourned to meet on the first Monday in September, 1895, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

JAMES DONALD, Complainant,
vs.
J. M. SCOTT, M. T. HOLLEY, SR., R. M. GARDNER, and E. C. BEACH, Defendants.

Be it remembered that heretofore, to wit, the twenty-fifth day of April, 1895, the said complainant, by his attorneys, Messrs. Bryan & Bryan, came into court and filed his complaint; which complaint is in the words and tenor following:

2 *Bill.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

To the judges of the circuit court of the United States for the district of South Carolina:

James Donald, of Charleston, South Carolina, and a citizen of the United States and a citizen of the State of South Carolina, on his own behalf and on behalf of all other persons in the State of South Carolina, as importers for their own use and consumers of the wines, ales, beers, and spirituous liquors, the products of other States and foreign countries, brings this his bill against J. M. Scott, M. T. Holley, E. C. Beach, and R. M. Gardner, claiming to act as constables of the State of South Carolina, and all other persons whomsoever claiming to act as such constables or as county sheriffs, municipal policemen, or executive officers, or in any capacity whatever, under or by virtue of an act of the General Assembly of the State of South Carolina, generally known as the "dispensary law," approved Jan. 2, 1895, and hereinafter more particularly referred to (which other persons, when their names are discovered, your orator prays may be made parties defendants to this bill); and thereupon your orator complains and says:

I. That your orator was at the times hereinafter mentioned and is now a citizen of the State of South Carolina and of the United States, residing in the city of Charleston, State of South Carolina.

II. That on the — day of January, 1895, the plaintiff, being
3 owner of certain intoxicating liquors, to wit, one barrel of
Rochester beer, made in the State of New York, said beer then being in the city of New York and State of New York, of the value of ten dollars, shipped the same from the city of New York to the city of Charleston, South Carolina, by way of the Old Dominion Steamship line to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C.," which said package was duly received by the said Old Dominion Steamship line at the city of New York, in the State of New York, and in pursuance of such contract of shipment transported to Charleston, South Carolina, the last connecting carrier being the North Eastern Railroad Co., and while the said package was in the possession of the North Eastern Railroad Co., at Charleston, S. C., as common carrier, to wit, on the 26th day of January, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package. took and carried away the same.

That on the 5th day of March, 1895, the plaintiff, being owner of certain intoxicating liquors, to wit, one-half case of "Pickwick Club whiskey" containing six quart bottles, in the city of Baltimore and State of Maryland, of the value of six dollars, shipped the same from the city of Baltimore to the city of Charleston, South Carolina, by way of the Baltimore Steam Packet Co. and the Atlantic Coast line, to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C.," which said package was duly received by the said Baltimore Steam Packet Co. at the city of Baltimore, in the State of Maryland, and in pursuance of such contract of shipment transported to
Charleston, South Carolina, the last connecting carrier being
4 the North Eastern Railroad Co., and while the said package
was in the possession of the North Eastern Railroad Co., at Charleston, S. C., as common carrier, to wit, on the 8 day of March, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package, took and carried away the same.

That on the 6th day of March, 1895, the plaintiff, being owner of certain intoxicating liquors, to wit, one case of domestic California claret wine, containing one dozen quart bottles, in the city of Savannah, in the State of Georgia, of the value of four dollars, shipped the same from the city of Savannah to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C., one case of wine," which said package was duly received by the said Charleston & Savannah R'y Co. in the city of Savannah, in the State of Georgia, and in pursuance of such contract of shipment transported to Charleston, South Carolina, and while the said package was in the possession of the Charleston & Savannah R'y Co. at Charleston, S. C., as common carrier, to wit, on the 8 day of March, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package, took and carried away the same.

III. The said liquor as aforesaid contained in the said several packages was not produced in the State of South Carolina, but in the States of New York, Maryland, and California respectively, and was imported into the State of South Carolina by the plaintiff for his own use and consumption and was not intended for sale, barter, trade, or exchange by the plaintiff within the State of South Carolina.

IV. The plaintiff further alleges that the seizing and carrying away forcibly of the said packages of liquor, as aforesaid, by 5 the defendants was done without warrant or authority of law, but, on the contrary, under pretence of legal authority of an act of the General Assembly of the State of South Carolina generally known as the "dispensary law," entitled "An act to further declare the law in reference to and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same," approved January 2, 1895, a copy of which is annexed as part of this bill, marked Exhibit "A," to which reference in full is prayed; which said act, in its general tenor, scope, and effect and in so far as it attempts to abridge the right of this plaintiff (and of all others in like condition in the State of South Carolina) to import into the State of South Carolina such liquors, as aforesaid, of the plaintiff for his own use and to use and consume in the State of South Carolina the same so imported, is not an act enacted in the lawful exercise of the police power of the State of South Carolina, and is a restriction and regulation of commerce between the States and foreign nations and discriminates in favor of the products of the State of South Carolina against the products of other States and countries, and is in conflict with the article one, section- eight and nine, of the Constitution of the United States and the laws of Congress made thereunder, and is unconstitutional, null, and void.

V. That by and under article one, section- eight and nine, of the Constitution of the United States and the laws of Congress in pursuance thereof, regulating commerce between the States and foreign nations, the plaintiff and other citizens of the United States residing at Charleston, in the State of South Carolina, had at the times hereinbefore mentioned and is now guaranteed the right of importing his said property, the said packages of liquor as aforesaid, for his own use and consumption and to use and consume 6 the same, so imported from the city of New York, in the State of New York; the city of Savannah, in the State of Georgia, and the city of Baltimore, in the State of Maryland, to the city of Charleston, in the State of South Carolina (as well as if imported from any or all other cities and places in other States and foreign countries to the city of Charleston), the residence of the plaintiff, without interference or hindrance by any persons whomsoever claiming to act under the pretense of authority of the said null and void acts of the General Assembly of the State of South Carolina.

VI. That previous to such seizure by defendants, as aforesaid, of such liquors contained in such package, to wit, on the — day of January and — day of February, 1895, the plaintiff repeatedly gave notice to the defendants of his intention, in the exercise of his legal rights guaranteed by the Constitution of the United States, to import into the State of South Carolina from any other States and foreign countries, as he may need the same, ales, wines, and other liquors for his own use, and notified the said defendants and all concerned that any seizure of the said goods under any pretense of authority would be a great and grievous trespass and in disregard of his known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for his protection.

VII. That notwithstanding such notice and notwithstanding the known rights of the plaintiff, secured to him by the Constitution and laws of the United States, the said defendants, claiming to act as constables of the State of South Carolina, forcibly seized and carried away said packages of liquor as aforesaid; and the same unlawful acts they did knowingly and wrongfully, wilfully and maliciously, and with intent to oppress and humiliate and intimidate this
plaintiff and make him afraid to rely upon the Constitution
7 and laws of the United States and the judicial power thereof
for his protection in those rights, privileges, and immunities secured to the plaintiff by the Constitution and laws of the United States.

VIII. The plaintiff further alleges that the said defendants by the said malicious trespasses as aforesaid intended to make an example of the plaintiff, and thereby deter him and others from exercising his and their said legal rights and privileges, as aforesaid, secured by the Constitution and laws of the United States, and to deter him and others from relying upon the Constitution of the United States and the judicial power thereof for the protection of those rights, as aforesaid, guaranteed by the Constitution of the United States, and that in contempt of and in defiance of the said Constitution and laws of the United States and of the said judicial power thereunder the defendants seized, as aforesaid, the said packages of liquors, by reason whereof plaintiff's said rights were grossly violated and abused and his standing was greatly injured and his feelings greatly wounded and mortified.

IX. And your orator further shows that your orator, upon each of the seizures and t-espasses above mentioned, thereupon brought his action at law against the said defendants respectively in the circuit court of the United States for the district of South Carolina, alleging the facts as hereinbefore alleged and demanding heavy punitive, exemplary, and vindictive damages against the said defendants in the several actions respectively; which said suits are now pending in this court as follows, to wit:

The suit of your orator, James Donald, plaintiff, against the defendants R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, *defendants*, for six thousand dollars damages, begun in the circuit court of
the United States for the district of South Carolina on 16 day
8 of February, 1895. The suit of your orator, James Donald,
plaintiff, against defendant J. M. Scott, *defendant*, for six thou-

sand dollars damages, begun in the circuit court of the United States for the district of South Carolina on the 11th day of March, 1895. Suit of your orator, James Donald, plaintiff, against the defendant J. M. Scott, *defendant*, begun in the circuit court of the United States for the district of South Carolina on the 19 day of March, 1895, for six thousand dollars damages.

X. And your orator further shows that, notwithstanding said notice and warning to the defendants, as aforesaid, of the invasion and violation of the said constitutional rights of your orator, and notwithstanding the said legal actions brought to redress the violation of and to vindicate the same, the said defendants and all others, constables of the State of South Carolina, have since continued to seize and carry away ales, beers, wines, and spirituous liquors of your orator and of all other persons in the State of South Carolina imported from other States and foreign countries, and threaten to continue hereafter to seize all such wines, ales, beer, and spirituous liquors which will be brought into this State by your orator or any other person, and further threatens to enter forcibly the dwelling of your orator and there search the same for all such ales, beers, wines, and spirituous liquors imported into this State by your orator, and there forcibly seize and thence carry away the same and confiscate the same, and generally threaten to hinder and prevent your orator and other pensons in importing or bringing into this State for his own use and consumption ales, beers, wines, and spirituous liquors, the products of other States and foreign countries, and to hinder and
prevent your orator and other persons from holding, possess-
9 ing, using, and consuming the same so imported into this
State.

XI. And your orator further shows that protection of your orator at law involves a multiplicity of suits against said constables under their repeated and continuous trespasses, and that by said act of the General Assembly of South Carolina, known as the dispensary law, the remedy of replevin is denied your orator in the courts of the State of South Carolina for such seizures, and that all said constables as aforesaid are wholly irresponsible financially and unable to respond to any judgment for damages against them or either of them, and under their respective trespasses your orator's constitutional rights, privileges, and immunities as aforesaid have been and are now being and are threatened to be continually invaded and grossly violated without redress and to the irreparable injury of your orator.

XII. And your orator further shows that by the aforesaid the "dispensary" acts of the State of South Carolina of 1892, 1893, and 1894 the State commissioner is directed to sell ales, beers, wines, and spirituous liquors at a price not less than fifty per cent. advance on cost to county dispensaries, and said dispensaries are required to make further profit on sales, whereby the cost of intoxicating liquors when bought from the State dispensary by a citizen is grossly exorbitant and from 75 to 100 per cent. above their market and cost price, and your orator shows that the said right of importation as aforesaid by your orator or any other person for his own use and

consumption is of the money value of two thousand dollars and upward; and your orator further shows that the value of the ales, beers, wines, and spirituous liquors intended to be imported from other States and foreign countries by your orator for his own use
and consumption from time to time, and which are threat-
10 ened to be seized by said constables as aforesaid, exceeds the
sum of two thousand dollars.

XIII. And your orator further shows that your orator has no adequate remedy at law, and without the aid and intervention of this court, where these matters are properly cognizable, your orator is remediless in the premises.

To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process by subpœna, directed to said J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, defendants hereinbefore named, requiring each of them to appear herein and answer (but not under oath, the same being expressly waived) the several allegations in this your orator's bill contained.

And your orator further prays that upon final hearing it be ordered and decreed that a writ of injunction do issue out of this honorable court enjoining and commanding the defendants and all other persons claiming to act as constables of the State of South Carolina and all sheriffs, policemen, or other officers acting or claiming to act under the said dispensary law of the State of South Carolina or under any warrant of authority thereof from seizing or attempting to seize, in transit or otherwise, carry away, or confiscate any ales, beer, wines, or spirituous liquors imported or brought into the State of South Carolina by your orator or any other person for his own use and consumption, and from entering forcibly or searching or attempting to search the dwelling of your orator or any other person for any such ales, beers, wines, or spirituous liquors, or from hindering and preventing your orator or any other person in any manner whatsoever from importing, holding, possessing, using, and consuming the said liquors so imported.

Wherefore your orator prays the court to now grant him
11 a temporary writ of injunction restraining and enjoining the
said defendants and all other persons, as aforesaid, claiming to act under the said dispensary law of the State of South Carolina, from seizing or attempting to seize, in transit or otherwise, or entering the dwelling of your orator to search, seize, and carry away or confiscate any ales, beers, wines, or spirituous liquors imported into the State of South Carolina by your orator for his own use and consumption, or in any manner whatsoever hindering and preventing your orator from importing, holding, possessing, using, and consuming the said liquors *as* imported as aforesaid.

And your orator further prays for such other and further relief as may be just and equitable.

BRYAN & BRYAN,
Complainant's Solicitors.

UNITED STATES — AMERICA,
District — South Carolina, Fourth Circuit. }

Personally appeared James Donald, complainant herein, and makes oath that the foregoing bill of complaint is true to his knowledge.

JAS. DONALD.

Sworn to before me this 20th day of April, 1895.

ARTHUR BRYAN,
[SEAL.] *Notary Public for So. Ca.*

Filed 25th April, 1895.

12 EXHIBIT TO BILL.

The Dispensary Law.

AN ACT

To further declare the law in reference to, and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same.

SECTION 1. Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the manufacture, sale, barter or exchange, receipt, acceptance, delivery, storing and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges, by any person, firm, association or corporation, upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited, under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State penitentiary, or pay a fine of not less than one hundred dollars nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the court, for each offense. All such liquors, except when

The handling or keeping of alcoholic liquors.

Brewed liquors or compounds.

Their transportation or removal.

And payment of freight thereon.

Prohibited under penalty

Declared contraband.

And may be seized.

bought from a State officer authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health
and safety of the State, and may be seized
13 wherever found, without warrant, and
turned over to the State commissioner.

State board of control.

Clerk.

Salary.

Sec. 2. The governor, the secretary of state and the comptroller general shall *ex officio* constitute the State board of control to carry out the provisions of this act. The State board of control shall elect a clerk, who shall hold his office during the pleasure of the board and shall receive as compensation for his services a salary of eight hundred dollars per annum.

Appointment of commissioner.

Purchase of liquors.

Location of commissioner.

Term of office.

Removal.

Salary.

Book-keeper.

Other assistants.

Test of liquors.

Assistants to chemist.

Sec. 3. That the State board of control shall, at the expiration of the term of the present commissioner, and at the expiration of every two years thereafter, appoint a commissioner, which appointment shall be submitted to the senate at its next session for its approval; said commissioner shall be believed by the State board of control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State board of control, purchase all intoxicating liquors for lawful sale in this State, and furnish the same to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this act. Said commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State board of control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of twenty-five hundred dollars, payable at the same time and in the same manner as is provided for the payment of the salaries of State officers. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of twelve hundred dollars; and such other assistants as in the opinion of the board of control may be deemed necessary. He shall not sell to the county dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina college and declared to be pure: Provided, that said board of control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina college in making the analyses required by this act; and the said

board of control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist
14 or such assistants. The State commissioner shall deposit all amounts received by him from sales to county dispensers or others with the treasurer of the State under such rules as may be made by the State board of control to insure the faithful return of the same, and the State treasurer shall keep a separate account with said fund, from which the commissioner shall draw from time to time, upon warrants duly approved by the chairman of said board, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said commissioner in the purchase of intoxicating liquors or in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State board of control. He shall, before entering upon the duties of his office, execute a bond to the State treasurer, with sufficient sureties, to be approved by the attorney general, in the penal sum of twenty-five thousand dollars, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made by said commissioner, as contemplated in this act, the commissioner shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to him from the place of purchase or by him to the county dispensaries, certified by his official signature and seal, which certificate shall state that liquors contained in said packages have been purchased by him for sale within the State of South Carolina, or to be shipped out of the State, under the laws of said State; and without such certificate any package containing liquors which shall be shipped out of the State, or shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any court of competent jurisdiction by summons and complaint, proceedings to be instituted by the solicitor of any circuit with whom evidence may be lodged by any officer or citizen having knowl-

Compensation.

Deposit with State treasurer.

Separate account.

Warrants on fund.

Rules of State board.

Bond of commissioner.

Certificate on packages.

Shipments, &c., without certificates.

Seized as contraband.

Penalty to carriers.

How recovered.

Illegal use of certificate.

Penalty.

edge or information of the violation; and any person attaching or using such certificate without the authority of the commissioner, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors out of or within this State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars and imprisonment in the penitentiary for not less than one year for each offense.

Monthly statement by commissioner.

To be filed.

SEC. 4. Said commissioner shall make a printed monthly statement, under oath, of all liquors sold by him, enumerating the different kinds and quality of each kind, the price paid, and the terms of payment and to whom sold; also the names of the parties from whom the liquor was purchased and their places of business and dates of purchase, which statement shall be filed with the State board of control.

Packages for shipment.

Exceptions.

Proviso.

Sales by dispensers.

SEC. 5. The State commissioner shall, before shipping any liquors to dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the package only, and no person shall open the same on the premises: Provided, this section shall not apply to malt liquors shipped in cases or bottles thereof shipped in barrels; and such malt liquors may be sold by the county dispenser in such quantities, of not less than one pint, as he may see proper: Provided, the same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the daytime, under such rules as may be made by the State board of control, or by the county board of control with approval of the State board of control.

County board of control.

Removal.

Rules.

SEC. 6. It shall be the duty of the State board of control to appoint a county board of control, composed of the county supervisor *ex officio* and two other persons believed by the said board not to be addicted to the use of intoxicating liquors. The two persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State board of control. Said county board of control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective counties: Provided, all such rules shall be submitted to the State board and approved by 16 them before adoption. The members of the county board of control shall qualify and be commissioned as are other county officers, without fees therefor.

Approval of State board.

Qualification.

Sec. 7. Applications for positions of county dispenser shall be by petition, signed and sworn to by the applicant and filed with the county board of control at least ten days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he has been engaged two years previous to filing petition; that he is a citizen of the United States and of South Carolina; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. This permit or renewal thereof shall issue only on condition that the applicant shall execute to the county treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors, that he will pay all fines, penalties, damages and costs that he may be assessed, or recorded against him, for violations of such laws during the term for which said permit or renewal is granted, and will not sell intoxicating liquors under his permit at a price other than that fixed by State board of control. Said bond shall be for the use of the county or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said permit, or the renewal thereof, is granted. The said bond shall be deposited with the county treasurer, and suit thereon shall be brought at any time by the solicitor or any person for whose benefit the same is given; and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of

Application by dispensers.

Contents of petition.

Bond.

Condition.

For whose use.

Deposit of bond.

Suit on bond.

Liability.

Other provisions.

the law. All other moneys collected for 17 breaches of such bond shall go into the county treasury. Said bond shall be approved by the county board of control under the rules and laws applicable to the approval of the official bonds.

Number and location of dispensaries.

Preliminary proceedings.

How prevented.

None in the country except in Beaufort and Horry.

Proceedings in places heretofore dry by law.

Election.

Exceptions.

Liquor from other counties.

SEC. 8. There may be one or more county dispensers appointed for each county, the place of business of each of whom shall be designated by the county board, but the State board must give consent before more than one dispenser can be appointed in any county; and when the county board designates a locality for a dispensary, ten days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such dispensary is to be located to prevent its location in such township by signing a petition or petitions, addressed to the county board, requesting that no dispensary be established in that township, whereupon some other place may be designated. The county board may in its discretion locate a dispensary elsewhere than in an incorporated town in the counties of Beaufort and Horry and no others, except such as are authorized by special act of the General Assembly: Provided, however, that any county, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such county, town or city wishing a dispensary therein being filed with the county supervisor or town or city council, respectively, they shall order an election submitting the question of dispensary or no dispensary to the qualified voters of such county, town or city, and shall prescribe the rules, regulations, returns, ballots, and notice of such election and shall declare the result; and if a majority of the ballots cast be found and declared to be for a dispensary, then a dispensary may be established in said county, town or city: Provided, that dispensaries may be established in the counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee county without such election on compliance with the other requirements of this act: Provided, that nothing in this act contained shall be so construed as to prohibit persons resident in counties which shall elect to have no dispensary from pro-

Shipment.

Dispensaries allowed in Oconee and Pickens.

curing liquors from dispensaries in other
18 counties, or county dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, that nothing in this act shall be construed to repeal an act entitled "An act to allow the opening of dispensaries in Pickens and Oconee counties," approved December 18th, 1894.

Oath by dispensers.

Permit to dispensers.

Specifications.

Permits to be in trust.

Revocation.

Surrender of property.

Sec. 9. If the application for the position of dispenser be granted, it shall not issue until the applicant shall make and subscribe on oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, —— ——, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and especially I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true full and accurate returns to the county board of control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and filing bond as hereinbefore provided, the county board of control shall issue to him a permit authorizing him to keep and sell intoxicating liquors as in this act provided, and every permit so granted shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Permits granted under this act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the county board of control; and upon the removal of any county dispenser, or upon demand of the county board of control, he shall immediately turn over to the

Other provisions.

the law. All other moneys collected for 17 breaches of such bond shall go into the county treasury. Said bond shall be approved by the county board of control under the rules and laws applicable to the approval of the official bonds.

Number and location of dispensaries.

Preliminary proceedings.

How prevented.

None in the country except in Beaufort and Horry.

Proceedings in places heretofore dry by law.

Election.

Exceptions.

Liquor from other counties.

Sec. 8. There may be one or more county dispensers appointed for each county, the place of business of each of whom shall be designated by the county board, but the State board must give consent before more than one dispenser can be appointed in any county; and when the county board designates a locality for a dispensary, ten days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such dispensary is to be located to prevent its location in such township by signing a petition or petitions, addressed to the county board, requesting that no dispensary be established in that township, whereupon some other place may be designated. The county board may in its discretion locate a dispensary elsewhere than in an incorporated town in the counties of Beaufort and Horry and no others, except such as are authorized by special act of the General Assembly: Provided, however, that any county, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such county, town or city wishing a dispensary therein being filed with the county supervisor or town or city council, respectively, they shall order an election submitting the question of dispensary or no dispensary to the qualified voters of such county, town or city, and shall prescribe the rules, regulations, returns, ballots, and notice of such election and shall declare the result; and if a majority of the ballots cast be found and declared to be for a dispensary, then a dispensary may be established in said county, town or city: Provided, that dispensaries may be established in the counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee county without such election on compliance with the other requirements of this act: Provided, that nothing in this act contained shall be so construed as to prohibit persons resident in counties which shall elect to have no dispensary from procuring liquors from dispensaries in other 18 counties, or county dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, that nothing in this act shall be construed to repeal an act entitled "An act to allow the opening of dispensaries in Pickens and Oconee counties," approved December 18th, 1894.

Shipment.

Dispensaries allowed in Oconee and Pickens.

Oath by dispensers.

Sec. 9. If the application for the position of dispenser be granted, it shall not issue until the applicant shall make and subscribe on oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, —— ——, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and especially I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true full and accurate returns to the county board of control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and filing bond as hereinbefore provided, the county board of control shall issue to him a permit authorizing him to keep and sell intoxicating liquors as in this act provided, and every permit so granted shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Permits granted under this act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the county board of control; and upon the removal of any county dispenser, or upon demand of the county board of control, he shall immediately turn over to the

Permit to dispensers.

Specifications.

Permits to be in trust.

Revocation.

Surrender of property.

Prosecutions.

Successor.

county board of control all liquors and
19 other property in his possession belonging to the State or county. Said county board of control shall be charged with the duty of prosecuting the county dispenser or any of his employees who may violate any of the provisions of this act. On the death, resignation or removal of a county dispenser or expiration of his term of office, the county board shall appoint his successor.

Office and clerk of county board.

Books and records.

Location of dispensaries.

Meetings of county board.

Compensation.

Limit.

Assistants to dispenser.

Compensation.

Appropriation of profits.

Proviso.

County dispensers report and forward money weekly.

Sec. 10. The county board of control shall use as their office the office of the county supervisor of their county, and shall elect one of their number as chairman and another as clerk of the said county board of control. The county board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining to the granting or revocation of permits, and keep suitable books in which bonds and permits shall be recorded. The books shall be furnished by the county like other public records. The county board of control shall designate or provide a suitable place in which to sell the liquors. The members of the county board of control shall meet once a month or oftener, on the call of the chairman, and each member of the board shall receive a *per diem* of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year except in the county of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell county not more than fifty days in any one year. They shall, upon the approval of the State board of control, employ such assistants for the county dispenser as may be necessary. The dispenser and his assistants shall receive such compensation as the State board of control may determine. All profits, after paying all expenses of the county dispensary, shall be paid, one-half to the county treasury and one-half to the municipal corporation in which it may be located, such settlements to be made quarterly: Provided, that if the authorities of any town or city, in the judgment of the State board of control, do not enforce this law, the State board may withhold the part going to the said town or city and use it to pay State constables or else turn it into the county treasury. All moneys received by the county dispenser belonging to the State shall be forwarded on Monday of each week to the State

commissioner, and at the same time the
20 county dispenser shall forward to the State board of control a duplicate statement of the remittance so made to the State commissioner. On the same day of each week the county dispenser shall deposit with the county treasurer the portion of all the moneys received by him belonging to the county and to the municipal authorities in which the dispensary is located. The county treasurer shall give his receipt therefor and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of December, March, June and September in each year. Such settlement shall be made in the presence of the county auditor, who shall make a memorandum of the items thereof, and forward the same to the State board of control. The mayor or intendant of the city or town in which the dispensary is located shall also attend such settlement: Provided, that in counties where dispensaries other than incorporated cities or towns the county shall get all profits that would otherwise go to such cities and towns.

Deposit with county treasurer share of county.

Quarterly settlement.

SEC. 11. Before selling or delivering any intoxicating liquors to any person, a request must be presented to the county dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required, and his or her true name, and the request shall be signed by the applicant in his own true name and signature, attested by the county dispenser or his clerk who receives and files the request. But the request shall be refused if the county dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said county dispenser, before filling said order or delivering said liquor, he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor, and is not in the habit of using intoxicating liquors to excess.

Requests for liquor.

Signing and attestation.

To whom refused

Certification of applicant.

SEC. 12. Requests for purchase of liquor shall be made upon blanks furnished by the county auditor, in packages of one hundred each,
21 to the county dispensers, from time to time

Blanks for returns.

Description.

as the same shall be needed, and shall be numbered consecutively by the auditor. The blanks aforesaid shall be furnished to the county auditor by the State board of control, in uniform books, like bank checks, and the date of delivery shall be endorsed by the county auditor on each book and receipt taken therefor and preserved in his office. The dispenser shall preserve the application in the original form consecutively by the auditor. The blanks aforesaid shall be — and book, except the filling of the blanks therein, until returned to the county auditor. When return thereof is made the county auditor shall endorse thereon the date of return, and file and preserve the same, to be used in the quarterly settlements between such dispenser and the county treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such county dispenser.

Disposition of requests.

Returns by dispenser.

SEC. 13. On or before the tenth day of each month each dispenser shall make full returns to the county auditors of all requests filled by him and his clerks during the preceding month upon blanks to be furnished by the State board of control for that purpose, and accompany the same with an oath, duly taken and subscribed before the county auditor or a notary public, which shall be in the following form, to wit: "I, —— ——, being duly sworn, state on oath that the requests for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ——, 189–; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the requests herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises."

Accompanying oath.

Failure by dispenser to make returns.

SEC. 14. Upon failure of any dispenser to make returns to the auditor as herein required, it shall be the duty of said auditor to report such failure to the State board of control, and the said State board of control shall immediately order the county board to summon said delinquent dispenser to appear before them and show cause

Proceedings.

why his permit should not be revoked;
22 and if the cause shall not be shown to the satisfaction of the county board of control, they shall immediately annul said permit and give public notice thereof; and the circuit solicitor shall proceed to enforce the penalties prescribed in this act for such violation against said county dispenser at the next succeeding term of court in the county in which such permit is held; and any dispenser who shall sell or dispose of any intoxicating liquors after his permit shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned for six months. If any dispenser or his clerk shall purchase any intoxicating liquors from any other person except the State commissioner, or if he, or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been purchased from the State commissioner, or shall adulterate, or cause to be adulterated, any intoxicating, spirituous or malt liquors which he or they may keep for sale under this act, by mixing with same coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months. If any county dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, county or municipality, he shall, upon conviction, be punished as in case of breach of trust with fraudulent intent.

Revocation of permit.

Enforcement of penalties.

Punishment for further sales.

Penalty for illegal purchase, sale, adulteration, &c.

Punishment for breach of trust.

License to distill.

Sec. 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter or dispense any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State board of control a permit or license so to do, and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol

23 within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, the United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power, upon any violation of this act, to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods.

Dispensers alone may sell, &c.

Dispensers as herein provided shall alone be authorized to sell and dispense liquors containing alcohol, and all permits must be procured by such dispensers as herein provided from the county board of control:

Sales and shipments by manufacturers.

Provided, that the manufacturers of distilled, malt or vinous liquors who are doing business in the State shall be allowed to sell to no person in this State except the State commissioner and to parties outside the State, and the State commissioner shall purchase his supplies from the brewers and distillers in this State when their product reaches the standard required by this act:

Preference to be given domestic brewers, &c.

Provided, such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere: And provided further, that the State commissioner shall have the right, and he is hereby empowered, to purchase malt liquors from breweries of this State, and also from breweries outside of this State, who may have agents representing them in this State.

Certificate for liquors shipped by manufacturers.

Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State commissioner allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in section three:

Penalty.

Wine for own use.

And provided, that any person shall have the right to make wine for his or her own use from grapes or other fruits.

Inspector to search

The inspector appointed by the State board of control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to

allow the inspector to enter and examine
24 his place of business and its appurtenances
at such times as the inspector may deem
proper shall forfeit his permit or license.

SEC. 16. Every dispenser shall keep a strict account of all liquors received by him from the State commissioner in a book kept for that purpose, which shall be subject at all times to the inspection of the circuit solicitor, any peace officer or grand juror of the county, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

Account book of dispenser.

Open to inspection.

Statements.

Book as evidence.

SEC. 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be *prima facie* evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this act; and unless said person or parties are selling under permit as prescribed by this act they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States courts of illicit sales of liquor shall be taken as *prima facie* evidence of violation of the provisions of this act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States courts shall, by reason of such conviction, forfeit the permit or license granted him by the State board of control in addition to the other penalties herein provided.

Prima facie evidence of illegal sales.

Penalty.

SEC. 18. Licensed druggists conducting drug stores and manufacturers of proprietary medicines are hereby authorized to purchase of dispensers of the counties of their residence intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be used as a beverage. The dispensers shall not charge such licensed druggists more than ten per cent. net profit for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity

Licensed druggists.

Price to druggists.

Account to be kept by druggist.

Sworn reports.

Penalty for illegal use.

Revocation of druggist's license.

Proviso.

Sale of alcohol.

so used, and quarterly they shall make and file with the county auditor and with the county board of control sworn reports, giving a full and 25 true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange or in any manner dispose of said liquors for any purpose other than authorized by this section, he shall upon conviction forfeit his license and be liable to all penalties, prosecutions and proceedings at law and in equity provided against persons selling without permit, and upon such conviction the clerk of the court shall, within ten days after such judgment or order, transmit to the board of pharmaceutical examiners the certified record thereof, upon receipt of which the said board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: Provided, that nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: And provided, further, that the State commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at cost.

False signatures, statements, &c.

Penalty.

Sec. 19. If any person shall make any false or fictitious signature or sign any name other than his or her own to any paper required to be signed by this act, without being authorized so to do, or make any false statement in any paper, request or application signed to procure liquors under this act, the person so offending shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars, or be imprisoned not more than thirty days.

False oaths.

Sec. 20. If any dispenser, or his clerk, shall make false oath touching any matter required to be sworn to under the provisions of this act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any county dispenser shall purchase or procure any intoxicating liquors from other person than the State commissioner, or make any false return to

Penalty.

the county auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor, and 26 upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

Illegal acts by dispensers.

Liquors at clubs prohibited.

Aiders and abettors.

Penalty.

Proviso as to hotels.

Terms of the exemption.

Bond.

Right of entry by constables.

SEC. 21. Every person who shall directly or indirectly keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club-room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, that the State board of control shall have the power, upon a proper showing and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating this act by reason of any manager of such hotels dispensing liquors bought from the dispensary, by the bottle, either night or day, but before any such exemption shall be granted the State board of control shall require the manager of such hotel to give a good and sufficient bond, in the penal sum of three thousand dollars, conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said board and with all the requirements of this act, and it shall be lawful for any constable or officer thus employed under this act to enter such hotel and search it any time, day or night, without a warrants, for contraband liquors.

Liquor resorts declared to be nuisances.

Arrest warrant.

SEC. 22. All places where alcoholic liquors are sold, bartered or given away in violation of this act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this act, are hereby declared to be common nuisances, and any person may go before any trial justice in the county and swear out an arrest warrant on per-

To whom directed.

Search warrant.

Seizure of liquors.

And bar-room appliances.

Inventory.

Disposition of case.

Papers in duplicate.

Duty of solicitor.

Restraining order.

No undertaking required.

Contempt of court and its punishment.

Conviction for nuisance.

Punishment.

sonal knowledge or on information and belief,
charging said nuisance, giving the names of witnesses
against the keeper or manager of such place
and his aids and assistants, if any, and such
27 trial justice shall direct such arrest warrant
either to the sheriff of the county or to any
special constable, commanding said defendant to
be arrested and brought before him to be dealt
with according to law, and at the same time shall
issue a search warrant in which the premises in
question shall be particularly described, commanding
such sheriff or constable to thoroughly
search the premises in question and to seize all
alcoholic liquors found thereon, and dispose of
them as provided in section 33, and to seize all
vessels, bar fixtures, screens, bottles, glasses and
appurtenances apparently used or suitable for use
in retailing liquors, to make a complete inventory
thereof, and deposit the same with the sheriff.
That under the arrest warrant the defendant shall
be arrested and brought before such trial justice,
and the case shall be disposed of as in case of other
crimes beyond his jurisdiction, except that when
he commits or binds over the parties for trial to
the next term of court of general sessions for the
county, he shall make out every paper in the case
in duplicate and file one with the clerk of the
court for the county, and immediately transmit
the other to the solicitor of the circuit, whereupon
said solicitor shall at once apply to the circuit
judge at chambers within that circuit for an order
restraining the defendants, their servants or agents,
from keeping, receiving, bartering, selling or
giving away any alcoholic liquors until the further
order of the court. Such circuit judge is hereby
authorized, empowered and required to grant the
said restraining order without requiring a bond
or undertaking upon the hearing or receipt by
him of said papers from the court of the said
trial justice by the hands of the solicitor; and any
violation of said restraining order before the trial
of the case shall be deemed a contempt of court
and punished as such by said judge or court, or any
other circuit judge, as for the violation of an order
of injunction. Upon conviction of said defendants
of maintaining said nuisance at the trial,
they or any of them shall be deemed guilty of a
misdemeanor, punishable by imprisonment in
the State penitentiary for a term of not less than
three months, or a fine of not less than two hundred
dollars, or by both, in the discretion of the

court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the sheriff, shall be forfeited to the State and sold and the net proceeds sent to the State commissioner, 28 and the sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this act as when other liquors are seized. The finding of such alcoholic liquors on such premises, with satisfactory evidence that the same was being disposed of contrary to this act, shall be *prima facie* evidence of the nuisance complained of. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment in the State penitentiary not less than ninety days nor more than one year. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this act, the court, or, in vacation, the judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a *prima facie* case for the State. The accused may plead in the same manner as to an indictment in so far as the same is applicable. Evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The clerk of the court shall, upon the application of either party, issue subpœnas for witnesses, and except as above set forth the practice in such contempt proceedings shall conform as nearly as may to the practice in the court of common pleas. That when any solicitor neglects or refuses to perform any duty or to take any steps required of him by any of the provisions of the preceding section or by any of the provisions of this act, the attorney general on his own motion, or by the request of the governor, shall in person or by his assistant proceed to the locality

Restraining order made perpetual.

Forfeiture to State.

Sale by sheriff.

Prima facie evidence.

Process to recover prohibited.

Action prohibited.

Contempt and its punishment.

Summary trial for contempt.

Affidavit.

Rights of accused.

Evidence.

Witnesses.

Solicitor neglecting to prosecute, attorney general must do so.

and perform such neglected duty and take such steps as are necessary in the place instead of such solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against
29 the solicitor for malfeasance or misfeasance in office or for official misconduct or for other charges justified by facts and to pursue the prosecution to the extent of a conviction and dismissal from office of any such solicitor. And in such event the attorney general shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the attorney general.

Contracts for domestic wines.

Profit to dispensary.

Registered distillers; reports by.

When to be deemed common nuisances.

Proceedings against.

SEC. 23. The State commissioner, under rules and regulations provided by the State board of control, may enter into contracts with responsible grape-growers in this State for the sale of domestic wines through the dispensary, so as to encourage grape-growing in this State, and in furtherance of this object not more than ten per cent. profit to the dispensary over the expenses of bottling, labeling, freighting, etc., shall be charged for the handling of such wines. The manager of every registered distillery of liquor in this State shall report quarterly to the State commissioner, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States internal revenue collector of this State, or it is shown that said manager has disposed of liquor contrary to this act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this act provided as to places where liquors are sold contrary to this act.

Search warrants.

By whom issued.

Authority conferred.

SEC. 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquors *is* in such place, a search warrant may be issued by a justice, judge or trial justice, or mayor or intendant of a city or town, to whom application is made, empowering a constable, or any person who may be deputized, to enter the said place by daytime or in the night-time and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

Disposition of liquor seized.

Seizure without warrant.

30 Sec. 25. That any of the liquors set forth in section one (1) of this act, which are contraband, may be seized and taken without warrant by any State constable, sheriff or policeman, while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State commissioner at once, who shall dispose of the same as hereinafter provided: Provided, that liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Exception.

Illicit liquors; possession of, and debt for.

Sec. 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any court in this State.

Proceeding *in rem.*

Sec. 27. That the proceeding against liquor so illegally kept, stored, sold, delivered, transported or being transported shall be considered a proceeding *in rem,* unless otherwise herein provided, elsewhere than at his or her residence.

Packages falsely branded.

Sec. 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for the term of not less than six months nor more than one year, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence *prima facie* of guilt. The books and waybills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in a like penalty.

Shall be forfeited.

Further penalties.

Prima facie evidence.

Books and waybills.

Suspicious packages to be detained.

Without process.

Suspension of officers.

One-half to officers.

SEC. 29. That all constables, deputy constables, sheriffs, trial justice or municipal police-
31 men shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever. Any constable, deputy constable, sheriff or trial justice who shall neglect or refuse to perform the duties required by this act shall be subject to suspension by the governor. Any sheriff or trial justice seizing any alcoholic liquors or liquids as required by this section shall be paid one-half the value of such liquor or liquids so soon as the same shall have been received at the State dispensary, approved and disposed of according to law.

Forbidden conduct to or by an officer.

Penalty.

SEC. 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned for a term of not less than three months nor more than twelve months.

Proceedings when goods seized are of value of $50.

List.

Appraisement.

Pay of appraisers.

SEC. 31. In all cases of seizure of any goods, wares or merchandise hereafter or heretofore made as being subject to forfeiture under any provision of this act or the former act, which, in the opinion of the officer or person making the seizure, are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina residing within the county wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State commissioner. Second. If the said goods are believed by the officer making

the seizure to be of less value than fifty
32 dollars, no appraisement shall be made.
The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the county where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors so seized as contraband and the vessels containing the same, within the time specified in the notice, may file with the State commissioner a claim stating his interest in the articles seized, and may execute a bond to the State commissioner in the penal sum of five hundred dollars, with sureties, to be approved by the said State commissioner, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State commissioner he shall transmit the same with the duplicate list or description of the goods seized to the solicitor of the circuit in which such seizure was made and the said solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State commissioner shall have the said liquors tested by the State chemist, and if pure shall sell the same through the State dispensary as though purchased by him. If not pure, he shall sell the same beyond the State and deposit the proceeds to the credit of the State commissioner: Provided, that in seizures in quantities less in value than fifty dollars of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the State commissioner and disposed of as hereinbefore provided: Provided, further, that the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a trial justice that he has complied with the law and that the liquor is not liable to seizure.

When of less value than $50.

Public notice.

Contents.

Claim for goods.

Filing claim.

Bond of claimant.

Condition.

Proceedings thereunder.

Duty of solicitor.

Forfeiture in case of no claim.

Duty of State commissioner.

Proviso as to small values.

Proceeding by claimant of small values.

Sec. 32. That all fermented, distilled or other liquors or liquids containing alcohol, transported

Liquors on arrival in State to be subject to its laws.

33 into this State or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Penalty for transportation of liquors in vehicles.

Removal of liquors at unusual stations.

Penalty.

Exceptions.

Liquors *in transitu* within State.

Penalties against common carriers.

Recovery of.

Officers may enter and search cars, &c.

SEC. 33. That no person, except as provided in this act, shall bring into this State or transport from place to place within this State, by wagon, cart, or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations, doing business in this State as common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall upon conviction be sentenced to pay a find of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: Provided, that said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: Provided, that this section does not apply to liquors purchased from a dispensary and bearing the proper label or certificate. All liquors in this State, except dispensary liquors and those passing through this State, consigned to points beyond this State, shall be deemed contraband and may be seized in transit without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State for sale or use therein, except by the dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the solicitor of the circuit, or the attorney general, by an action brought therefor in any court of competent jurisdiction. The State constable, sheriff, municipal police or any lawful constable may enter any railroad car,

or express car, or depot, or steamboat, or other vessel, without warrant and make search for such contraband liquors, and may examine
34 the waybills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months.

Penalty for resisting.

Arrest of open violators.

Sec. 34. That any person detected openly or in the act of violating any of the provisions of this act shall be liable to arrest without warrant: Provided, a warrant shall be procured within a reasonable time thereafter.

Punishment for forbidden acts.

Sec. 35. That violations of any of the sections of this act where punishment upon conviction is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the court trying the same. All alcoholic liquors other than domestic wine, and in quantity more than five gallons, which do not have on the packages in which they are contained the label and certificates going to show that they have been purchased from a State officer authorized to sell them are hereby declared contraband, and on seizure will be forfeited to the State as provided in section 31: Provided, that this section shall not apply to liquor held by the owners of registered stills. Persons having more than five gallons of liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State commissioner and applying for certificates to affix thereto. After sixty days from the approval of this act any liquor found in the State not having such certificates may be seized and confiscated. Persons having more than they wish to use may obtain certificates to ship beyond the limits of the State. 'Any persons affixing or causing to be affixed to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by the State commissioner shall, for each offense, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Liquors not certified declared to be contraband.

Forfeiture.

Exception.

Protection may be had for liquor stored.

Liquor not certified.

Certificates for shipment.

Imitation stamps or devices prohibited.

Penalty.

Rescue from officer.

Sec. 36. Every person who dispossesses or rescues from a constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law, shall, upon conviction, be imprisoned

Penalty.

not less than three months nor more than
35 twelve months, or pay a fine of not less
than one hundred dollars nor more than
five hundred dollars.

Contraband liquor by night.

Sec. 37. Any person handling contraband liquor in the night-time, or delivering the same, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months, nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Penalty.

Transportation by vehicles at night.

Sec. 38. Any wagon, cart, boat or other conveyance transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State commissioner.

Proceedings.

Dispenser to cancel labels.

Sec. 39. Every dispenser when he sells a package containing liquor shall put a cross-mark in ink on the label or certificate thereon, extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Burden of proof where liquor not labeled.

Common carriers liable for goods lost or stolen.

Sec. 40. That any railroad, steamboat, express company, or other common carrier, shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the dispensary, whether shipped as released or not, such penalty to be recovered by action in any court of competent jurisdiction.

Recovery.

Agency for purchase of liquors prohibited.

Sec. 41. That it shall be unlawful for any person to take or to solicit orders, or to receive money from other persons, for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for liquors to be purchased and shipped from the dispensary, and any person violating this section, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a term of not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Penalty.

Officers to notify solicitors.

Sec. 42. It shall be the duty of sheriffs, deputy sheriffs and constables having notice of the violation of any of the provisions of this act to notify the circuit solicitor of the fact of such viola-

tion, and to furnish him the names of any
36 witness within their knowledge by whom
such violation can be proven. If any such officer or solicitor shall willfully fail to comply with the provisions of this section, he shall, upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and such conviction shall work a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

Failure of duty by solicitor.

Penalty.

Governor to appoint State constables.

Pay.

Chief constables.

Pay.

SEC. 43. The governor shall have authority to appoint one or more State constables, at a salary of two dollars per day when on duty, and two chief constables, at three dollars each per day and expenses, to see that this act is enforced, the same to be charged to the expense account of the State commissioner, except as otherwise provided in this act.

Remedies.

Provisional remedies under code do not apply.

SEC. 44. That chapter I, title VII, of the Code of Civil Procedure of this State, entitled "Of provisional remedies in civil actions," shall not apply to any officer or person having duties to perform under this act, and in no case shall an action lie against any such officer or person for damages to person or property as provided in said chapter.

Change of venue on motion of prosecuting officer.

SEC. 45. That when any bill of indictment shall have been given out by any solicitor or by the attorney general or an assistant attorney general to any grand jury in any county of this State at any term of the court of general sessions therein charging any person or persons with any violation of any of the provisions of the statutes of this State relating to spirituous, alcoholic, malt or intoxicating liquors and such grand jury shall in the opinion of such prosecuting officer, from prejudice, caprice, undue influence or other improper cause, refuse to find a true bill thereon, it shall be then and there competent for such prosecuting officer to move for, and for the presiding judge to grant at his discretion, a change of venue and place of hearing and trial at such stage of the proceedings when such judge is satisfied with the showing of such prosecuting officer, to be made on the minutes of the court or upon affidavit, that a fair and impartial consideration cannot be had
before such grand jury.

Affidavit for search warrant to set forth sources of information.

37 SEC. 46. That whenever in this act it is
provided that process shall issue upon an affidavit based on information and belief, the

affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: Provided, that it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warrant of arrest shall issue, but it shall only be necessary in cases of search warrants.

Repealing clause.

SEC. 47. That this act shall be a public act, and shall go into effect immediately upon its approval by the governor, and that all acts or parts of acts inconsistent with this act be, and are hereby, repealed.

Approved January 2d, A. D. 1895.

Filed 25th April, 1895.

38 *Subpœna ad Re.*

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina. }

The President of the United States of America to J. M. Scott, R. M. Gardner, M. T. Holley, Sr., E. C. Beach:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of June, twenty days after the service *t*hereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of James Donald.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the sovereignty and Independence of the United States of America.

BRYAN & BRYAN,
Complainant's Solicitors.

39 *Memorandum.*

The defendants will take notice that they are required to enter their appearance in this suit, in the clerk's office of the circuit court of the United States for the district of South Carolina, on or before the first Monday of June, 1895; otherwise the bill will be taken *pro confesso* against them.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

Marshal's Return of Service.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within *subpœna ad re.* personally upon M. T. Holley, Sr., J. M. Scott, R. M. Gardner on the 26th day of April, 1895; that he served a copy upon E. C. Beach personally on the 27th day of April, 1895, in the city of Charleston, S. C.

H. J. HICKSON,
Chief Deputy U. S. M.

Sworn to and subscribed before me this 29th day of April, A. D. 1895.

J. WESLEY SMITH, [SEAL.]
U. S. Comm'r.

Filed 25th April, 1895.

40 *Order to Show Cause.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

JAMES DONALD, Complainant,
vs.
J. M. SCOTT, R. M. GARDNER, M. T. HOLLEY, SR., and E. C. BEACH, Defendants.

On hearing and filing above sworn bill of complaint and on motion of Bryan & Bryan, complainant's solicitors, it is—

Ordered that the defendants herein do show cause before me, on the 1st day of May, 1895, at Charleston, South Carolina, why a writ of preliminary injunction should not be issued against the said defendants as prayed in the bill.

CHARLES H. SIMONTON,
Circuit Judge.

25th April, 1895.

Marshal's Return of Service.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within "order to show cause" personally upon each of the following-named persons in the city of Charleston, S. C., on April 26th, 1895: M. T. Holley, Sr., J. M. Scott, R. M.

Gardner, and that he served a copy upon E. C. Beach personally on the 27th day of April, 1895, in the city of Charleston, S. C.

H. J. HICKSON,
Chief Deputy U. S. M.

Sworn to and subscribed before me this 29th day of April, A. D. 1895.

J. WESLEY SMITH, [SEAL.]
U. S. Comm'r.

Filed 25th April, 1895.

41 *Return to Rule to Show Cause.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

Circuit Court. In Equity.

JAMES DONALD in His Own Behalf and All Other Citizens of the State, as Importers for Their Own Use and Consumers of Wines, &c., the Products of Other States and Foreign Count-ies, Complainants,

vs.

J. M. SCOTT, T. M. HOLLEY, SR., E. C. BEACH, and J. M. GARDNER, Constables, Defendants.

To the Honorable C. H. Simonton, circuit judge for the district of South Carolina:

And now comes J. M. Scott, M. T. Holley, Sr., E. C. Beach, and J. M. Gardner, as State constables, upon whom has been served an order requiring them to show cause before Honorable C. H. Simonton, United States circuit judge, on the 1st day of May, A. D. 1895, at Charleston, South Carolina, why writ of preliminary injunction should not be issued against them, — for cause says:

I. That they submit that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this honorable court.

II. That they submit that the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged, if the said allegations be true.

III. That they submit that the bill is defective in its allegations and do not state a case coming within the jurisdiction of the court.

IV. That they submit that this is in effect a suit against the State of South Carolina, in violation of the eleventh amendment to 42 the Constitution of the United States, and the court has no jurisdiction.

And for further cause say:

I. That as to the matters and things set forth in the first paragraph of the bill they have no knowledge or information sufficient to form a belief.

II. That they admit the statements contained in the 2nd paragraph of the bill, as to the commencement of actions against them, but have no knowledge as to the matters and things set forth as to the shipments of the liquors mentioned.

III. That as to the allegations of the third paragraph of the bill they have no knowledge or information sufficient to form a belief, and therefore deny the same.

IV. That they deny the allegations of the fourth paragraph of the bill, and submit that the dispensary act referred to therein is not in its general tenor, scope, and effect, in so far as it attempts to abridge the right of the plaintiff to import liquors into the State of South Carolina for his own use and consumption, in conflict with any of the provisions of the Constitution and laws of the United States and is unconstitutional and void.

V. That they deny the matters and things set forth in the 5th paragraph of the bill.

VI. That as to the allegations contained in the 6th paragraph of the bill they admit that the complainant gave them some kind of notice about the importation of liquors, but they deny that the complainant has any legal right guaranteed by the Constitution of the United States to import into the State of South Carolina from any other State or foreign country ales, wines, and liquors for his own use, and that any seizure of such articles so imported would be a great and grievous trespass against his constitutional right.

43 VII. That as to the allegations of the 7th paragraph of the bill they admit that as State constables they have seized some liquors consigned to the plaintiff, but deny all the other allegations.

VIII. That they deny the matters and things set forth in the 8th paragraph of the bill.

IX. That they admit that the suits referred to in the 9th paragraph of the bill have been instituted as alleged and are still pending.

X. That they deny the allegations of the 10th paragraph of the bill.

XI. That they deny the allegations of the eleventh paragraph of the bill.

XII. As to the allegations of the 12th paragraph of the bill they say that — have no knowledge or information sufficient to form a belief, and therefore deny the same.

XIII. That they deny that the complainant has no remedy at law, and submit that under the dispensary act a plain remedy is given by which any liquors seized can be restored on application to the State commissioner; and, further, that an action of claim and delivery is also allowed them, the section of the dispensary act only denying him the right to the special proceeding of claim and delivery in an action.

Your respondents prays the attention of the court to the dispensary act of South Carolina, and respectfully submits that its proper construction is a question for this court in case the court holds that it has jurisdiction.

Wherefore your respondents pray that the motion for an injunction be denied.

M. T. HOLLEY, Sr.
R. M. GARDNER.
E. C. BEACH.
J. M. SCOTT.

WM. A. BARBER,
Attorney General, for Defendants.

Sworn to and subscribed before me this first day of May, A. D. 1895.

W. GIBBS WHALEY,
Notary Public, S. C.
[SEAL.]

Filed 1st May, 1895.

44 *Opinion.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD
vs.
J. M. SCOTT, M. T. HOLLEY, SR., *et al.*

Bill for injunction and relief.

Opinion on motion for injunction, the rule thereon, and the return thereto.

SIMONTON, *J.:*

This is a bill against the defendants, State Constables of the State of South Carolina.

The bill states that the complainant is a citizen of the United States and of the State of South Carolina; was the owner of certain packages of alcoholic liquor, to wit, one barrel of Rochester beer, made in the State of New York, and shipped to him by ocean and land routes to the city of Charleston, his place of residence; one package of Pickwick Club whiskey, containing six quart bottles, purchased in Baltimore, in the State of Maryland, and shipped to him by steamer and railroad to Charleston, South Carolina, his residence, and one case of domestic California claret, containing one dozen quart bottles, shipped to him from the place of purchase, Savannah, in the State of Georgia, to Charleston by rail; that these packages contained liquors for his own personal use and
45 consumption, and not for sale in any way; that none of them contained any product of the State of South Carolina, but their contents were products of other States of the Union; that each package was openly marked in his name; that upon the arrival of each of the said packages at Charleston, its destination, it was forcibly seized by the defendants, claiming to act as State constables, and

taken and carried away by them under pretense of authority of the act of the General Assembly of South Carolina, approved 2nd January, 1895, commonly known as the dispensary law; that before the arrival of each shipment the complainant had given notice to the defendant of his intention to import the same for his own personal use from points without this State, and that defendants, when they made their several seizures, had knowledge of all the facts connected with the importation, shipment, and proposed use of the packages; that upon each seizure and after demand and refusal he brought his action for the unlawful trespass on his rights by the defendants, and that notwithstanding this they persist therein and manifestly propose to drive him to a multiplicity of suits; that he has no adequate remedy at law for these repeated violations of his rights, as the defendants are notoriously insolvent and pecuniar-y irresponsible. He avers that so much of the dispensary law as is set up in justification of these acts of the defendants in preventing him from importing for his own use and consumption alcoholic liquors the products of other States into this State violates the interstate commerce law as established by the Constitution and laws of the United States and is null and void. His bill, filed as well in his own behalf *and* in that of other citizens of this State in like plight with himself, prays an injunction against the defendants forbidding them to continue their unlawful search and seizure of packages imported as these were.

46 Upon filing the bill a rule was issued requiring the defendants to appear and show cause why an injunction should not issue as prayed for in the bill.

The defendants have appeared and have filed their return.

After denying the jurisdiction of the court, because this suit is in fact one against the State, and because it presents no question arising under the Constitution and laws of the United States, and because the allegations of the bill show no ground of equity jurisdiction, they answer in detail the allegations of the bill, excusing and justifying their conduct in the premises under the provisions of the dispensary law.

The arguments at the hearing on both sides have been able and exhaustive. The time at the command of the court forbids for the present any extended discussion of the important points raised and elaborately discussed. This must be reserved for a future occasion. Conclusions only can at this time be given.

It is not a suit against the State of South Carolina, nor is she in any way a party thereto. Certain persons claim to act in the name of the State, basing their claim on the dispensary law. Their justification depends on the validity of that law, and if it, or that part of it which authorized them to seize and carry away the property of the complainant under the circumstances charged in the bill, be in conflict with the Constitution of the United States or any law made thereunder, it is null and void, is as if it never existed, and they are left without justification.

The questions made in the bill are Federal questions. Are the acts complained of in violation of the Constitution of the United States or of any law passed thereunder?

. This court sitting in equity has jurisdiction over the matters
stated in the bill, to prevent a multiplicity of suits and be-
47 cause the complainant has no plain, adequate, or complete
remedy at law.

We come, then, to the all-important question on the merits of the bill.

Is the provision of the dispensary law which forbids a citizen of the State himself to import for his own use from the other States alcoholic liquor sustainable under the act of Congress commonly known as the Wilson bill? It is, if these provisions of the dispensary law are the lawful exercise of the police power of the State.

The dispensary law nowhere declares that the use and consumption of alcoholic liquors in themselves are injurious to the morals, good health, and safety of the State or of her people. On the contrary, the dispensary law makes the most ample provision for the purchase of alcoholic liquors in this State and elsewhere, for their distribution in convenient packages, with- the reach of nearly every person throughout all portions of the State, for use and consumption by the people of the State, and in every way it encourages such use and consumption. Even in localities in which the majority of the inhabitants refuse to have a dispensary provision is made for the procur-ment of alcoholic liquor by those persons within the locality who desire to use it. Alcoholic liquor is declared to be contraband and against the morals, good health, and safety of the State only when it is not imported by the dispenser or is not in his hands or in the hands of some one with his permission. Alcoholic liquors imported into this State and declared contraband and injurious to the morals, good health, and safety of the State, and so subject to
seizure, just as soon as they are seized and passed into the
48 hands of the dispenser lose their injurious qualities, are put
into the channels of distribution, and are sold to the people
of the State for their use and consumption.

It is not necessary to go into a minute and detailed examination into all the provisions of the dispensary law, nor to determine whether all these provisions are or are not in the exercise of the police power. It is sufficient for the purposes of this case to say that in so far as the dispensary law forbids a citizen to purchase in other States and to import into this State alcoholic liquors for his own use and consumption, the products of other States, it discriminates against the products of other States. Such discrimination cannot be made under the guise of the police power. Walling *vs.* Michigan, 116 U. S., 446, cited and approved in Plubley *vs.* Massachusetts, 155 U. S., 471; Emert *vs.* Missouri, 156 U. S., 296. And, further, in so far as this act permits the chief dispenser to purchase in other States alcoholic liquors and to import them into this State for the purpose of selling them for use and consumption at retail within the State, and forbids all other persons from so purchasing and importing for their individual use and consumption, it discriminates against all other citizens of the State. It also makes a discrimination against all persons in the trade in other States who are not patronized by the State dispenser, forbidding them to seek customers within the State and to enjoy a commercial intercourse secured to others in this State.

These conclusions rest on this discrimination. If it did not exist, and if all alcoholic liquors were excluded from the State, or if all persons were forbidden to import alcoholic liquors, or if the laws of
South Carolina had declared that all alcoholic liquors were
49 of such poisonous and detrimental character, and *and* that
their use and consumption as a beverage were against the
morals, good health, and safety of the State, other and different questions would arise.

Let an injunction issue as prayed for in the bill.

CHARLES H. SIMONTON,
Circuit Judge.

8th May, 1895.

Filed 8th May, 1895.

50 *Order Granting Writ of Injunction.*

UNITED STATES — AMERICA,
District — South Carolina.

Circuit Court, Fourth Circuit.

JAMES DONALD, on His Own Behalf and on Behalf of All Other Persons in the State of South Carolina, as Importers for Their Own Use and Consumers of the Wines, Ales, Beers, and Spirituous Liquors the Products of Other States and Foreign Countries, Complainant,

vs.

J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. Gardner, Claiming to Act as Constables of the State of South Carolina, *et al.*, Defendants.

On hearing and filing return of the defendants herein to the rule to show cause herein, dated and filed first day of May, 1895, why an injunction should not issue against the defendants as prayed in the bill of complaint filed in this court on the 25th day of April, 1895, and upon motion of Bryan & Bryan, counsel for the complainant, and upon hearing J. P. K. Bryan, counsel for complainant, and Wm. A. Barber, attorney general of South Carolina, and C. P. Townsend, assistant att'y general of South Carolina, counsel for the defendants, and upon due consideration thereof, it is now —

Ordered, adjudged, and decreed that a writ of injunction
51 be awarded and do issue out of this court, commanding, en-
joining, and restraining the defendant M. T. Holley, Senior, as chief constable of the State of South Carolina, and all other State constables of South Carolina and officers and other persons acting under him, his and their successors in office, and also the defendants J. M. Scott, R. M. Gardner, and E. C. Beach, and all other State

constables of South Carolina, and all county sheriffs and their deputies, and all municipal officers, chiefs of police, and policemen, and all other officers of the State of South Carolina, or of any county, city, or town of said State of South Carolina, and all persons whomsoever acting or claiming to act under the authority of the act of the General Assembly of the State of South Carolinia approved January 2nd, 1895, or under any warrant issued by or under authority thereof, from seizing or attempting to seize, in transit or otherwise, both before and after arrival in the State of South Carolina and at any place in the State of South Carolina, take, carry away, or confiscate any packages whatsoever of ales, wines, beers, or spirituous liquors, or any intoxicating liquors the products of other States or foreign country imported into or brought into the State of South Carolina by any means of transportation whatsoever by the complainant, James Donald, or any other person whomsoever, for his own use and consumption, and from entering forcibly or searching or attempting to search the premises or dwelling of the complainant, James Donald, or any other person in the State of South Carolina, or any railroad depot, railroad car, or steamboat, or sailing vessel, or other vehicle of interstate commerce, or any vehicle whatsoever within this State, for such intoxicating liquors as aforesaid imported or brought into this State for his use or consumption, or from hindering and preventing by any means whatsoever the
52 complainant, James Donald, or any other person in the State
of South Carolina, as importer and consumer of the ales, beers, wines, and spirituous liquors of other States and foreign countries, from importing, holding, possessing, using, and consuming the said intoxicating liquors as aforesaid so imported for his use and consumption.

CHARLES H. SIMONTON,
Circuit Judge.

8th May, 1895.

Mem.—This order of injunction granted after hearing and decision of the cases at law by James Donald against these defendants, when the legal right as claimed in the bill was adjudged and other cases at law still pending in this court presenting the same question.

CHARLES H. SIMONTON.

Filed 8th May, 1895

53 *Writ of Injunction.*

United States of America, }
District of South Carolina. }

Circuit Court, Fourth Circuit. In Equity.

James Donald, in His Own Behalf and on Behalf of All Other Persons in the State of South Carolina, as Importers for Their Own Use and Consumers of the Wines, Ales, Beers, and Spirituous Liquors the Products of Other States and Foreign Countries, Complainant,

against

J. M. Scott, M. T. Holley, Senior, E. C. Beach, and R. M. Gardner, Claiming to Act as Constables of the State of South Carolina, and All Other Persons Whomsoever Claiming to Act as such Constables or as County Sheriffs, Municipal Policemen, or Executive Officers, or in any Capacity Whatsoever, under or by Virtue of an Act of the General Assembly of the State of South Carolina, Generally Known as the "Dispensary Law," Approved January 2, 1895, Defendants.

The President of the United States to M. T. Holley, Senior, as chief constable of the State of South Carolina, and all other State constables of the State of South Carolina and officers and other persons acting under him, his and their successors in office, and also the defendants, J. M. Scott, R. M. Gardner, and E. C. Beach, and all other State constables of the State of South Carolina, and all county sheriffs and their deputies, and all municipal officers, chiefs of police, and policemen, and all other officers of the State of 54 South Carolina, or of any county, city, or town in the said State of South Carolina, and all persons whomsoever acting or claiming to act under the authority of the act of the General Assembly of the State of South Carolina approved January 2, 1895, or under any warrant issued by or under authority thereof:

Whereas in the above-entitled cause, now pending in said United States circuit court in and for the district of South Carolina, upon application duly made to the Honorable Charles H. Simonton, a circuit judge of the United States for the fourth judicial circuit of the United States, it was on the 8th day of May, 1895, ordered, adjudged, and decreed that a writ of injunction issue therein as prayed for in the bill of complaint herein filed and as directed in said order and decree:

Now, therefore, know ye that you, M. T. Holley, Senior, as chief constable of the State of South Carolina, and all other State constables of the State of South Carolina and officers and other persons acting under you, your and their successors in office, and also the defendants J. M. Scott, R. M. Gardner, and E. C. Beach, and all other State constables of the State of South Carolina, and all county sheriffs and their deputies, and all municipal officers, chiefs of

police, and policemen, and all other officers of the State of South Carolina, or of any county, city, or town of the said State of South Carolina, and all persons whomsoever acting or claiming to act under the authority of the act of the General Assembly of the State of South Carolina approved January 2, 1895, or under any warrant issued by or under authority thereof, your agents, servants, and attorneys, and each of you, are hereby strictly commanded, restrained, and enjoined from seizing or attempting to seize, in transit or otherwise, both before and after arrival in State of South
Carolina, and at any place in the State of South Carolina,
55 take, carry away, or confiscate any packages whatsoever of
ales, wines, beers, or spirituous liquors, or any intoxicating liquors the products of any other State *of* foreign country, imported into or brought into the State of South Carolina by any means of transportation whatsoever by the complainant, James Donald, or any other person whatsoever, for his own use and consumption, and from entering forcibly or searching or attempting to search the premises or dwelling of the complainant, James Donald, or any other person in the State of South Carolina, or any railroad depot, railroad car, or steamboat or sailing vessel, or other vehicle of interstate commerce, or any vehicle whatsoever within this State, for such intoxicating liquors as aforesaid imported or brought into this State for his own use or consumption, or from hindering and preventing by any means whatsoever the complainant, James Donald, or any other person in the State of South Carolina, as importer and consumer of ales, beers, wines, and spirituous liquors of other States and foreign countries, from importing, holding, possessing, using, and consuming the said intoxicating liquors, as aforesaid, so imported for his own use and consumption, and you and each of you*r* are hereby commanded that you do desists and refrain from doing or causing to be done all or any of the acts and things hereinabove recited and set forth unti*l* the further order of this court.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this ninth day of May, 1895, and seal of said circuit court of the United States in and for the district of South Carolina.

[SEAL.] J. E. HAGOOD.
C. C. C. U. S., Dist. S. C.

BRYAN & BRYAN,
Complainant's Solicitors.

56 *Marshal's Return of Service.*

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within writ of injunction personally upon M. T. Holley, Sr., E. C. Beach, and R. M. Gardner in the city of Charleston, S. C., on the 9th day — May, 1895, and that he served a copy personally upon J. M. Scott in the city of Charleston, S. C., on the 18th day — May, 1895.

H. J. HICKSON,
Deputy U. S. M.

Sworn to before me this 20th day — May, 1895.

E. M. SEABROOK,
C. D. C. U. S., Dist. S. C.

Filed 9th May, 1895.

57 *Order Granting Leave to Amend Bill.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court. In Equity.

JAMES DONALD, in His Own Behalf and on Behalf of All Other Persons in the State of South Carolina, as Importers for Their Own Use and Consumers of the Wines, Ales, Beers, and Spirituous Liquors the Products of Other States and Foreign Countries, Complainant,

vs.

J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. Gardner, Claiming to Act as Constables of the State of South Carolina, and All Other Persons Whomsoever Claiming to Act as Such Constables or as County Sheriffs, Municipal Policemen, or Executive Officers, or in any Capacity Whatsoever, under or by Virtue of an Act of the General Assembly of the State of South Carolina, Generally Known as the "Dispensary Law," Approved January 2, 1895, Defendants.

On motion of Bryan & Bryan, complainant's solicitors, it is—

Ordered that the complainant have leave to amend the bill of complaint herein by adding thereto the following formal amendments:

1. By adding to paragraph one the words "and that the other said persons on behalf of whom he sues, to wit, importers for their own use and consumers in the State of South Carolina of such wines, ales, beers, and spirituous liquors as aforesaid, are too numerous to make parties complainants to this bill, and that some
58 of them are unknown."

2. By inserting on page 10, on last line, between the word "orator" and the word "for," the words "or any other person in the State of South Carolina as importer."

3. By inserting on page 11, line first, between the word "orator" and the word "from," the words "or any other person in the State of South Carolina."

Let a copy of this order be served on the solicitor of the defendants.

CHARLES H. SIMONTON,
Circuit Judge.

26th June, 1895.

Filed 26th June, 1895.

I accept service of a copy of the within order.

WM. A. BARBER,
Defendants' Solicitor.

27th June, 1895.

59 *Amended Bill of Complaint.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

Circuit Court, Fourth Circuit.

To the judges of the circuit court of the United States for the district of South Carolina:

James Donald, of Charleston, South Carolina, and a citizen of the United States and a citizen of the State of South Carolina, on his own behalf and on behalf of all other persons in the State of South Carolina, as importers for their own use and consumers of the wines, ales, beers, and spirituous liquors the products of other States and foreign countries, brings this his bill against J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, claiming to act as constables of the State of South Carolina, and all other persons whomsoever claiming to act as such constables, or as county sheriffs, municipal policemen, or executive officers, or in any capacity whatever, under or by virtue of an act of the General Assembly of the State of South Carolina, generally known as the "dispensary law," approved Jan. 2, 1895, and hereinafter more particularly referred to (which other persons, when their names are discovered, your orator prays may be made parties defendants to this bill); and thereupon your orator complains and says:

I. That your orator was at the times hereinafter mentioned and is now a citizen of the State of South Carolina and of the United States, residing in the city of Charleston, State of South Carolina, and that the other said persons on behalf of whom he sues, to wit,
importers for their own use and consumers in the State of
60 South Carolina of such wines, ales, beers, and spirit-ous
liquors as aforesaid, are too numerous to make parties complainants to this bill, and that some of them are unknown.

II. That on the — day of January, 1895, the plaintiff, being owner of certain intoxicating liquors, to wit, one barrel of Rochester beer, made in the State of New York, said beer then being in the city of New York and State of New York, of the value of ten dollars, shipped the same from the city of New York to the city of Charleston, South Carolina, by way of the Old Dominion Steamship line and the Atlantic Coast line, to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C.," which said package was duly received by the said Old Dominion Steamship line at the city of New York, in the State of New York, and in pursuance of such contract of shipment transported to Charleston, South Carolina, the last connecting carrier being the North Eastern Railroad Co., and while the said package was in the possession of the North Eastern Railroad Co., at Charleston, S. C., as common carrier, to wit, on the 26 day of January, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package & took and carried away the same.

That on the 5 day of March, 1895, the plaintiff, being owner of certain intoxicating liquors, to wit, one-half case of "Pickwick Club whiskey" containing six quart bottles, in the city of Baltimore and State of Maryland, of the value of six dollars, shipped the same from the city of Baltimore to the city of Charleston, South Carolina, by way of the Baltimore Steam Packet Co. and the Atlantic Coast line, to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charles-
61 ton, S. C.," which said package was duly received by the said
Baltimore Steam Packet Co. at the city of Baltimore, in the State of Maryland, and in pursuance of such contract of shipment transported to Charleston, South Carolina, the last connecting carrier being the North Eastern Railroad Co., and while the said package was in the possession of the North Eastern Railroad Co., at Charleston, S. C., as common carrier, to wit, on the 8 day of March, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package, took and carried away the same.

That on the 6 day of March, 1895, the plaintiff, being owner of certain intoxicating liquors, to wit, one case of domestic California claret wine containing one dozen quart bottles, in the city of Savannah, in the State of Georgia, of the value of four dollars, shipped the same from the city of Savannah to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C., one case of wine," which said package was duly received by the said Charleston & Savannah R'y Co in the city of Savannah, in the State of Georgia, and in pursuance of such contract of shipment transported to Charleston, South Carolina, and while the said package was in the possession of the Charleston & Savannah R'y Co. at Charleston, S. C., as common carrier, to wit, on the 8 day of March, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package, took and carried away the same.

III. The said liquor as aforesaid contained in the said several packages was not produced in the State of South Carolina, but in the States of New York, Maryland, and California respectively, and was imported into the State of South Carolina by the plaintiff for his own use and consumption and was not intended for sale, barter, trade, or exchange by the plaintiff within the State of
62 South Carolina.

IV. The plaintiff further alleges that the seizing and carrying away forcibly of the said packages of liquor, as aforesaid, by the defendants was done without warrant or authority of law, but, on the contrary, under pretense of legal authority of an act of the General Assembly of the State of South Carolina generally known as the "dispensary law," entitled "An act to further declare the law in reference to and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same," approved January 2, 1895, a copy of which is annexed as part of this bill, marked Exhibit "A," to which reference in full is prayed; which said act, in its general tenor, scope, and effect and in so far as it attempts to abridge the right of this plaintiff (and of all others in like condition in the State of South Carolina) to import into the State of South Carolina such liquors, as aforesaid, of the plaintiff for his own use and to use and consume in the State of South Carolina the same so imported, is not an act enacted in the lawful exercise of the police power of the State of South Carolina, and is a restriction and regulation of commerce between the States and foreign nations and discriminates in favor of the products of the State of South Carolina against the products of other States and countries, and is in conflict with article one, section- eight and nine, of the Constitution of the United States and the laws of Congress made thereunder, and is unconstitutional, null, and void.

V. That by and under article one, section- eight and nine, of the Constitution of the United States and the laws of Congress in pursuance thereof, regulating commerce between the States and foreign nations, the plaintiff (and others) as citizens of the United States residing at Charleston, in the State of South Carolina, had
63 at the times hereinbefore mentioned and is now guaranteed
the right of importing his said property, the said packages of liquor as aforesaid, for his own use and consumption and to use and consume the same, so imported from the city of New York, in the State of New York; the city of Savannah, in the State of Georgia, and the city of Baltimore, in the State of Maryland, to the city of Charleston, in the State of South Carolina (as well as if imported from any or all other cities and places in other States and foreign countries to the city of Charleston), the residence of the plaintiff, without interference or hindrance by any persons whomsoever claiming to act under the pretense of authority of the said null and void acts of the General Assembly of the State of South Carolina.

VI. That previous to such seizure by defendants, as aforesaid, of such liquors contained in such packages, to wit, on the — day of January and — day of February, 1895, the plaintiff repeatedly gave notice to the defendants of his intention, in the exercise of his legal rights guaranteed by the Constitution of the United States, to import into the State of South Carolina from any other States and foreign countries, as he may need the same, ales, wines, and other liquors for his own use, and notified the said defendants and all concerned that any seizure of the said goods under any pretense of authority would be a great and grievous trespass and in disregard of his known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for his protection.

VII. That notwithstanding such notice and notwithstanding the known rights of the plaintiff, secured to him by the Constitution and laws of the United States, the said defendants, claiming to act as constables of the State of South Carolina, forcibly seized
64 and carried away said packages of liquor as aforesaid; and
the same unlawful acts they did knowingly and wrongfully, wilfully and maliciously, and with intent to oppress and humiliate and intimidate this plaintiff and make him afraid to rely upon the Constitution and laws of the United States and the judicial power thereof for his protection in these rights, privileges, and immunities

secured to the plaintiff by the Constitution and laws of the United States.

VIII. The plaintiff further alleges that the said defendants by the said malicious trespasses as aforesaid intended to make an example of the plaintiff, and thereby deter him and others from exercising his and their said legal rights and privileges, as aforesaid, securred by the Constitution and laws of the United States, and to deter him and others from relying upon the Constitution of the United States and the judicial power thereof for the protection of those rights, as aforesaid, guaranteed by the Constitution of the United States, and that in contempt of and in defiance of the said Constitution and laws of the United States and of the said judicial power thereunder the defendants seized, as aforesaid, the said packages of liquors, by reason whereof plaintiff's said rights were grossly violated and abused and his standing was greatly injured and his feelings greatly wounded and mortified.

IX. And your orator further shows that your orator, upon each of the seizures and trespasses above mentioned, thereupon brought his action at law against the said defendants respectively in the circuit court of the United States for the district of South Carolina, alleging the facts as hereinbefore alleged and demanding heavy punitive, exemplary, and vindictive damages against the said defend-
65 ants in the several actions respectively; which said suits are now pending in this court as follows, to wit:

The suit of your orator, James Donald, plaintiff, against the defendants R. M. Gardner, M. T. Holly, Sr., and E. C. Beach, *defendants*, for six thousand dollars damages, begun in the circuit court of the United States for the district of South Carolina on 16 day of February, 1895; suit of your orator, James Donald, plaintiff, against defendant J. M. Scott, *defendant*, for six thousand dollars damages, begun in the circuit court of the United States for the district of South Carolina on the 11th day of March, 1895; the suit of your orator, James Donald, plaintiff, against the defendant J. M. Scott, *defendant*, begun in the circuit court of the United States for the district of South Carolina on the 19 day of March, 1895, for six thousand dollars damages.

X. And your — further shows that, notwithstanding said notice and warning to the defendants, as aforesaid, of the invasion and violation of the said constitutional rights of your orator, and notwithstanding the said legal actions brought to redress the violation of and to vindicate the same, the said defendants and all others, constables of the State of South Carolina, have since continued to seize and carry away ales, beers, wines, and spirituous liquors of your orator and of all other persons in the State of South Carolina imported from other States and foreign countries, and threaten to continue hereafter to seize all such wines, ales, beer, and spirit-ous liquors which will be brought into this State by your orator or any other person, and further threatens to enter forcibly the dwelling of your orator and there search the same for all such ales, beers, wines, and spirit-ous liquors imported into this State by your orator, and there forcibly seize and thence carry away the same and con- 66 fiscate the same, and generally threaten to hinder and prevent your orator and other persons in importing — bringing into this State for his own use and consumption ales and beers, wines, and spirituous liquors the products of other States and foreign countries, and to hinder and prevent your orator and other persons from holding, possessing, using, and consuming the same so imported into this State.

XI. And your orator further shows that protection of your orator at law involves a multiplicity of suits against said constables under their repeated and continuous trespasses, and that by said act of the General Assembly of South Carolina known as the dispensary law the remedy of *of* replevin is denied your orator in the courts of the State of South Carolina for such seizures, and that all said constables as aforesaid are wholly irresponsible financially and unable to respond to any judgment for damages against them or either of them, and under their respective trespasses your orator's constitutional rights, privileges, and immunities as aforesaid have been and are now being and are threatened to be continually invaded and grossly violated without redress and to the irreparable injury of your orator.

XII. And your orator further shows that by the aforesaid the "dispensary" acts of the State of South Carolina of 1892 and 1894 the State commissioner is directed to sell ales, beers, wines, and spirituous liquors at a price not less than forty per cent. advance on cost to county dispensaries, and said dispensaries are required to make further profit on sales, whereby the cost of intoxicating liquors when bought from the State dispensary by a citizen is grossly exorbitant and from 75 to 100 per cent. above their market and cost price, and your orator shows that the said right of importation as aforesaid by your orator or any other person for his own use 67 and consumption is of the money value of two thousand dollars and upward; and your orator further shows that the value of the ales, beers, wines, and spirituous liquors intended to be imported from other States and foreign countries by your orator for his own use and consumption from time to time, and which are threatened to be seized by said constables as aforesaid, exceeds the sum of two thousand dollars.

XIII. And your orator further shows that your orator has no adequate remedy at law, and without the aid and intervention of this court, where these matters are properly cognizable, your orator is remediless in the premises.

To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process by subpœna, directed to said J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, defendants hereinbefore named, requiring each of them to appear herein and answer (but not under oath, the same being expressly waived) the several allegations in this your orator's bill contained.

And your orator further prays that upon final hearing it be ordered and decreed that a writ of injunction do issue out of this

honorable court enjoining and commanding the defendants and all other persons claiming to act as constables of the State of South Carolina and all sheriffs, policemen, or other officers acting or claiming to act under the said "dispensary" law of the State of South Carolina or under any warrant or authority thereof from seizing or attempting to seize, in transit or otherwise, carry away, or confiscate any ales, beer, wines, or spirituous liquors imported or brought into the State of South Carolina by your orator or any other person for
his own use and consumption, and from — forcibly or
68 searching or attempting to search the dwelling of your orator
or any other person for any such ales, beers, wines, or spirituous liquors, or from hindering and preventing your orator or any other person in any manner whatsoever from importing, holding, possessing, using, and consuming the said liquors so imported.

Wherefore your orator prays the court to now grant him a temporary writ of injunction restraining and enjoining the said defendants and all other persons, as aforesaid, claiming to act under the said dispensary law of the State of South Carolina, from seizing or attempting to seize, in transit or otherwise, or entering the dwelling of your orator to search, seize, and carry away or confiscate any ales, beers, wines, or spirituous liquors imported into the State of South Carolina by your orator or any other person in the State of South Carolina for his own use and consumption, or in any manner whatsoever hindering and preventing your orator or any other person in the State of South Carolina from importing, holding, pos-essing, using, and consuming the said liquors *as* imported as aforesaid.

And *as* your orator further prays for such other and further relief as may be just and equitable.

BRYAN & BRYAN,
Complainant's Solicitors.

UNITED STATES — AMERICA,
District — South Carolina, Fourth Circuit. }

Personally appeared James Donald, complainant herein, and
makes oath that the foregoing bill of complaint is true to his
69 knowledge.

JAS. DONALD.

Sworn to before me this 20th day of April, 1895.

ARTHUR BRYAN,
[SEAL.] *Notary Public for So. Ca.*

Filed 26th June, 1895.

The exhibit attached to the amended bill is the same exhibit attached to the original bill. See exhibit in original bill, to wit, the "dispensary law" of the State of South Carolina, approved 2 January, 1895.

70 *Answer.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. In Equity.

In Re JAMES DONALD, in His Own Behalf and on Behalf of All Other Persons in the State of South Carolina, as Importers for Their Own Use and Consumers of Wines, Ales, Beers, and Spirituous Liquors the Products of Other States and Foreign Countries, Complainants,

vs.

J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. GARDNER, Claiming to Act as Constables of the State of South Carolina, and All Other Persons Whomsoever Claiming to Act as Such Constables or as County Sheriffs, Municipal Policemen, or as Executive Officers, or in any Capacity Whatsoever, under or by Virtue of an Act of the General Assembly of the State of South Carolina, Generally Known as the Dispensary Law, Approved January 2nd, 1895, Defendants.

To the honor. the circuit judges of the said court:

The defendants, M. T. Holley, Sr., J. M. Scott, R. M. Gardner, and E. C. Beach, now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage 71 or exception or otherwise that can or may be had or taken to the many issues, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, submits to this honorable court that the complainant has not in his bill shown any case in equity or case entitling him to proceed against them in this honorable court, and pray all such benefit as if they had demurred to the bill; and they further interpose a plea to the jurisdiction of the court—

1st. Because the suit is in effect a suit against the State of South Carolina, violation of the eleventh amendment to the Constitution of the United States.

2nd. Because the bill presents no question arising under the Constitution or laws of the United States.

3rd. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as ther- are plain and adequate remedies at law for the correction of any of the matters and things alleged in the bill, even if the allegations are true.

4th. Because the complainant hath not in and by his said bill made or stated a case to entitle him in a court of equity to any relief against them or either of them as to the matters contained in the said bill or any of such matters.

And these defendants, further answering, say, if the court has jurisdiction:

1st. That as to the matters and things set forth in the 1st paragraph of the bill they have no knowledge or information sufficient to form a belief, and therefore deny the same.

72 2nd. That they admit the statements contained in the 2nd paragraph of the bill as to the commencement of actions against them, but have no knowledge as to the matters and things set forth as to the shipments of the liquors mentioned.

3. That as to the allegations of the third paragraph of the bill they have no knowledge or information sufficient to form a belief, and therefore deny the same.

4. That they deny the allegations of the 4th paragraph of the bill, and submit that the dispensary act referred to therein is not in its general tenor, scope, and effect, in so far as it attempts to abridge the right of the plaintiff to import liquors into the State of South Carolina for his own use and consumption, in conflict with any of the provisions of the Constitution and laws of the United States, unconstitutional, or void.

5. That they deny the matters and things set forth in the 5th paragraph of the bill.

6th. That as to the allegations contained in the 6th paragraph of the bill they admit that the complainant gave them some kind of notice about the importation of liquors, but they deny that the complainant has any legal right, guaranteed by the Constitution of the United States, to import into the State of South Carolina from any other State or foreign country ales, wines, and liquors for his own use, and that any seizure of such articles so imported would be a great and grievous trespass against his constitutional right.

7. That as to the allegations of the 7th paragraph of the bill they admit that, as State constables, they have seized some liquors consigned to the plaintiff, but deny all the other allegations.

8. That they deny the matters and things set forth in the 8th paragraph of the bill.

73 9. That they submit that the suits referred to in the ninth paragraph of the bill have been instituted as alleged and are still pending.

10. That they deny the allegations of the 10th paragraph of the bill.

11. That they deny the allegations of the eleventh paragraph of the bill.

12. As to the allegations of the 12th paragraph of the bill they say they have no knowledge or information sufficient to form a belief, and therefore deny the same.

13. That they deny that the complainant has no remedy at law, and submit that under the dispensary act a plain remedy is given by which any liquors seized can be restored on application to the State commissioner, and, further, that an action of claim and delivery is also allowed them, the section of the dispensary act only denying him the right to the special proceeding of claim and delivery in an action.

Your respondents pray the attention of the court to the dispensary act of South Carolina, and respectfully submit that its proper construction is a question for this court, in case the court holds that it has jurisdiction, and herewith exhibit a copy of the dispensary law of South Carolina.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith -hey are charged in the bill, and they say they have made answer to matters in the said bill contained which they are advised are material and necessary for them to make answer to, and as to such matters as are traversed and denied, they are willing to aver, maintain, and prove as this honorable court shall direct.

74 And they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. A. BARBER,
Att'y Gen'l S. C., for Defendants.

UNITED STATES OF AMERICA,
District of South Carolina.

Personally appeared before me M. T. Holley, Sr., E. C. Beach, and J. M. Scott, three of the defendants above named, who, after being severally sworn, say each for himself that the foregoing answer is true to their own knowledge.

M. T. HOLLEY, SR.
J. M. SCOTT.
E. C. BEACH.

Sworn to and subscribed before me this 5th day of July, A. D. 1895.

W. GIBBES WHALEY,
Notary Public, S. C.

[SEAL.]

Filed July 5th, 1895.

75 *Replication to Answer.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, in His Own Behalf and on Behalf of All Other Persons in the State of South Carolina, as Importers for Their Own Use and Consumers of Wines, Ales, Beers, and Spirituous Liquors the Products of Other States and Foreign Countries, Complainant,

vs.

J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. GARDNER, Claiming to Act as Constables of the State of South Carolina, and All Other Persons Whomsoever Claiming to Act as Such Constables or as County Sheriffs, Municipal Policemen, or as Executive Officers, or in Any Capacity Whatsoever, under or by Virtue of an Act of the General Assembly of the State of South Carolina, Generally Known as the Dispensary Law, Approved January 2nd, 1895, Defendants.

Replication of complainant in above cause to the answer of J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, defendants.

This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto saith that he will aver and prove his said bill to be true 76 and sufficient, and that the said answer is untrue and insufficient; wherefore he prays relief as in said bill set forth.

BRYAN & BRYAN,
Complainant's Solicitors.

July 30, 1895, Charleston, S. C.

Filed 1st August, 1895.

77 *Trial of Cause.*

JAMES DONALD, Complainant,

vs.

J. M. SCOTT, M. T. HOLLEY, SR., R. M. GARDNER, and E. C. BEACH, Defendants.

At the stated term of the circuit court begun and holden at Greenville, S. C., in the district aforesaid, on the 5th day of September, 1895, this case came up for trial before the court on the following agreed statement of facts, and, after considering the same and argument of counsel, the court on the same day entered the following decree:

78 *Agreed Statement of Facts.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, Complainant, }
vs. }
J. M. SCOTT *et al.* }

For the purpose of this case the following statement contains the facts upon which this case is submitted to this court, subject to the objection to evidence hereinafter stated:

Statement of Facts.

1. James Donald, a citizen of the United States and of the State of South Carolina, has been many years and now is resident of Charleston, S. C.; is 56 years old; has been and is now a baker.

He has been accustomed to use alcoholic liquors, beer, wine, and ardent spirits in moderation all his life. He has been accustomed to use different brands of liquors at different times.

2. On the 6th day of March, 1895, he had shipped from Savannah, Georgia, one case of domestic California claret wine containing one dozen quart bottles, belonging to himself and addressed "James Donald, Charleston, S. C." This package came from Savannah, Georgia, to the city of Charleston by way of Charleston & Savannah Railway Company, and while in the depot of the Charleston & Savannah railway at Charleston, S. C., on 8 March, 1895, was seized and carried away by the defendant, claiming to act as State constable and under authority of the dispensary law of the State of South Carolina, approved January 2, 1895.

On the 5 day of March, 1895, James Donald shipped from Baltimore one-half case of "Pickwick Club" whiskey, containing 79 six quart bottles, belonging to himself and addressed "James Donald, Charleston, S. C." This package came from Baltimore to the city of Charleston by way of the Baltimore Steam Packet Company and the Atlantic Coast line, and while in the Northeastern R. R. depot in Charleston, S. C., on 8 March, 1895, was seized and carried away by the defendant, claiming to act as State constable and under authority of the "dispensary law" of the State of South Carolina, approved 2 January, 1895.

On — day of January, 1895, James Donald had shipped from New York city to his address, "James Donald, Charleston, S. C.," one barrel of bottled beer (10 dozen pint bottles) made in New York, known as "Rochester beer." This package was his own property, and came from New York by way of the Old Dominion Steamship line and Atlantic Coast line to the city of Charleston, and while in the Northeastern R. R. depot at Charleston, S. C., was on 29th January, 1895, seized and carried away by the defendant, claiming to act as State constable under the authority of the "dispensary law" of South Carolina, to wit, act approved Jan. 2, 1895.

3. That all said packages of liquors were produced in States other than the State of South Carolina, and were imported into the State of South Carolina for the use of himself (James Donald), and were not intended for sale, barter, trade, or exchange by plaintiff within the State of South Carolina.

4. James Donald was legally advised that the dispensary law of the State of South Carolina authorizing seizure of intoxicating liquors imported for his own use was void, and all such seizure was illegal as being against the Constitution of the United States, and that he had the legal right to buy in other States and foreign countries wine, beer, ales, and ardent spirits the product of other States and foreign countries, and to import them into South Carolina for his own use, and to own, possess, and use and consume the same so imported in South Carolina.

80 5. That before the importation of said packages and before the seizure he sent a written notice by mail to the defendant-informing them of his intention, in exercise of his legal right, guaranteed by the Constitution of the United States, to import ales, wines, and other liquors from other States and foreign countries for his own use and consumption as he may need the same, and that any seizure of said goods under any pretence of authority would be a great and grievous trespass and in disregard of his known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for his protection.

That, notwithstanding this written notice, the defendants took and carried away the said packages, as above stated, and have repeatedly seized other packages of liquors, even after suit brought in other cases by James Donald against them for such seizures.

6. James Donald was greatly humiliated and mortified in this invasion and deprivation of his right and felt he was being trampled on and made an example of in order to deter him and others from exercising their known constitutional rights in this matter.

That defendants acted after full notice, as above stated, from James Donald.

7. That the value of said package of California wine was four dollars, and the value of said package of "Pickwick Club" whiskey was six dollars, and the value of the said package of bottled beer was ten dollars.

8. And plaintiff, upon each of the seizures and trespasses above mentioned, thereupon brought his action at law against the said defendants respectively in this court (the circuit court of the United States for the district of South Carolina), alleging the facts as hereinbefore stated and demanding heavy punitive, exemplary, and vindictive damages against the said defendants in the several actions respectively; which suits *as* as follows, to wit:

81 The suit of your orator, James Donald, plaintiff, against the defendants R. M. Gardner, T. M. Holly, Sr., and E. C. Beach, *defendant*, for $6,000 damages, begun in the circuit court of

the United States for the district of South Carolina on the 16th of February, 1895; the suit of your orator, James Donald, plaintiff, against defendant J. M. Scott for $6,000 damages, begun in the circuit court of the United States for the district of South Carolina on the 11th March, 1895; the suit of your orator, James Donald, plaintiff, against the defendant J. M. Scott, begun in the circuit court of the United States for the district of South Carolina on the 19th day of March, 1895, for $6,000,*000* damages.

Judgment was given against the defendants overruling demurrer in all of these cases at law on 11th May, 1895, by the circuit court of the United States for the district of South Carolina, holding said dispensary law of January 2, 1895, repugnant to the Constitution of the United States in so far as it prohibits the importation of all such liquors imported for use of plaintiff from other States and foreign countries, and therefore null and void. In each of the three suits brought by plaintiff, James Donald, against defendants final judgment for $300 was given by court on 10 day of August, 1895, against the defendant.

After these seizures for which the suits aforesaid had been commenced at law to redress these wrongs of the plaintiff, the plaintiff, James Donald, made another importation of one-half case of Catherwood "Brunswick Club" whiskey (6 quart bottles), the property of the plaintiff, shipped from Philadelphia on 13th March, 1895, and addressed to "James Donald, Charleston, S. C.;" same on 18 March, 1895, was seized by defendants at North Eastern Railway depot, claiming to act as constables and under authority of the dispensary law of South Carolina, approved 2 Jan., 1895. For the fourth seizure plaintiff has brought no action at law.

82 9. F. Sommers, a citizen of the United States, resident at Charleston, S. C., and occupation a jeweler, 47 years old, and using intoxicating liquors in moderation, gave to defendant a similar notice in writing, by mail, January, 1895, of his intention to import for his own use and consumption, as he may need the same, ales, wine, and liquors, products of other States and foreign countries, in the exercise of his legal rights guaranteed by the Constitution of the United States, and that any seizure of said goods under any pretense of authority would be a great and grievous trespass and in disregard of his known constitutional right, for which they and all concerned would be held responsible by all legal remedies for his protection.

That notwithstanding such notice the defendants seized and carried away the following liquors, products of other States, the property of and imported by said F. Sommers for his own use and consumption, seized on following dates and places in Charleston, S. C., all marked "F. Sommers, 84 Hasel St., Charleston, S. C.:" (1) One case California domestic claret wine, 12 quart bottles, shipped from Savannah, Ga., 29 Jan., 1895; seized 12 Feb., 1895, by J. M. Scott, at Charleston & Savannah R. R. depot, Charleston, S. C.; value, $4.50; (2) one case "Pickwick Club" whiskey, 12 quart bottles, shipped from Baltimore Jan. 24, 1895; seized by R. M. Gardner 11 Feb., 1895, at N. E. R. R. depot, at Charleston, S. C.; value, $12;

(3) one-half case "Velvet whiskey," 6 quart bottles, shipped from New York 11 Feb., 1895, and seized 19 Feb., 1895, at N. E. R. R. depot, Charleston, S. C.; value, $6.

(4) One-half case "Pickwick Club" whiskey, 6 quart bottles, shipped from Baltimore Feb. 7, 1895; seized by R. M. Gardner 15 Feb., 1895, at N. E. R. R. depot, Charleston, S. C.; value, $6.

(5) One-half case "Brunswick Club" (Catherwood) whiskey, 6 quart bottles, shipped from Philadelphia 11 Feb., 1895; seized by R. M. Gardner 15 Feb., 1895, at N. E. R. R. depot, Charleston, S. C.; value, $4.

(6) One case B. & G. St. Julian claret, 12 quart bottles, shipped from New York 12 Feb., 1895; seized by J. M. Scott 18 Feb., 1895, at N. E. R. R. depot, Charleston, S. C.; value, $7.50.

83 (7.) One case Fronsae domestic claret wine, 12 quart bottles, shipped from Savannah, Ga., March 1, 1895, and seized by I. G. Strobel, State constable, March 5, 1895, at Charleston & Savannah R. R. depot, at Charleston, S. C.; value, $3.75.

That all of the said seven packages of liquors were products of States other than South Carolina and were imported solely for use and consumption of said F. Sommers.

That for seizures of said one-half case California claret on 12 Feb., 1895, set forth in number one (1) above, F. Sommers, by Bryan & Bryan, his attorneys, brought an action at law for six thousand dollars exemplary damages against the defendants M. T. Holley, Sr., J. M. Scott, and E. C. Beach in this court, the circuit court of the United States for district of South Carolina, which was filed and served on 16th Feb., 1895, and which action was pending when this bill was filed (as apparent by records of this court).

That for seizure of said case of "Pickwick Club" whiskey on 11 Feb., 1895, as set forth in number two (2) above, F. Sommers, by Bryan & Bryan, his attorneys, brought an action at law for six thousand dollars exemplary damages against the defendants J. M. Scott, T. M. Holley, Sr., and E. C. Beach in this court, the circuit court of United States for district of South Carolina, which was filed and served on 16th Feb., 1895, and which action was pending when this bill was filed (as appears by records of this court).

Complainant, James Donald, testifies he intends to import for his own use, from time to time as he may need the same, ales, beers, wines, liquors, the products of other States, of the value exceeding $2,000, which are threatened to be seized by the State constables, claiming to act under the dispensary law.

84 Previous to filing of bill and temporary injunction granted in this case the State constables seized, intended and threatened to seize in future, all intoxicating liquors whatsoever coming into the State from other States and foreign countries, and to carry out in full all the provisions of the dispensary law of 2 Jan., 1895.

The value of the right of importation of ales, wines, and other liquors, products of other States and countries, is of value of $2,000 and upwards. The difference in the price to the consumer, like himself, of such liquor brought at the State dispensary of South

Carolina and bought out of the State is about 50% to 75% in favor of imported liquors.

The defendants State constables who have made the seizures are all insolvent and financially irresponsible, except Chief State Constable Holley, Sr. He, Holley, has not personally made any seizures of liquors of complainant excepting the first seizure above stated.

So much of this statement of fact as related to the seizure of goods of F. Sommers and suit by him against defendants the defendants object — on the ground that it is errelevant, and the court overrul-s the objection; exception to ruling of court.

August 1, 1895.

BRYAN & BRYAN,
Complainant's Solicitors.
WM. A. BARBER,
Att'y General of South Carolina, for Defendants.

Filed 1st August, 1895.

85 *Decree.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, Complainant,
vs.
J. M. SCOTT *et al.*, Defendants.

This case came on to be heard on the pleadings and the agreed statement of facts; after considering the same and hearing counsel thereon—

It is ordered, adjudged, and decreed that the injunction heretofore granted in this cause be made perpetual, and that the defendant pay the costs of these proceedings.

5th September, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 5th September, 1895.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, on His Own Behalf and of Others, Complainant,
vs.
J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. GARDNER, and Other Constables and Officers of the State of South Carolina, Defendants.

And now comes J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, defendants in the above-named cause, and except to the final decree rendered by Hon. C. H. Simonton, United States circuit judge, in the causes and filed on fifth day of September, A. D. 1895, granting a perpetual injunction against the defendants:

1st. Because this suit is in effect a suit against the State of South Carolina, in violation of the eleventh amendment to the Constitution of the United States.

2nd. Because the bill presents no question arising under the Constitution or laws of the United States.

3rd. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of the 87 matters and things alleged in the bill, even if the allegations are true.

4th. Because the complainant has not in and by his said bill made or stated a case to entitle him in a court of equity to any relief against them or either of them as to the matters contained in the said bill or any of such matters.

5th. Because his honor erred in rendering a decree for perpetual injunction against others than the defendants named in the bill; and, further, in enjoining perpetually those officers from seizing ales, wines, and liquors from others than the complainant, James Donald.

6th. Because his honor erred in holding that the provisions of the act of the General Assembly of South Carolina approved 2nd day of January, 1895, commonly known as the dispensary law, forbidding a citizen of the State from importing ales, wines, and liquors for his own use from other States or foreign countries, are not the lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and interstate commerce acts of Congress.

7th. Because his honor erred in holding that the provision of the dispensary law forbidding a citizen to import alcoholic liquors for his own use and consumption, the products of other States, discriminates against the products of other States.

8th. Because his honor erred in holding that the provision of the

Carolina and bought out of the State is about 50% to 75% in favor of imported liquors.

The defendants State constables who have made the seizures are all insolvent and financially irresponsible, except Chief State Constable Holley, Sr. He, Holley, has not personally made any seizures of liquors of complainant excepting the first seizure above stated.

So much of this statement of fact as related to the seizure of goods of F. Sommers and suit by him against defendants the defendants object — on the ground that it is errelevant, and the court overrul-s the objection; exception to ruling of court.

August 1, 1895.

BRYAN & BRYAN,
Complainant's Solicitors.
WM. A. BARBER,
Att'y General of Sonth Carolina, for Defendants.

Filed 1st August, 1895.

85 *Decree.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, Complainant, }
vs.
J. M. SCOTT *et al.*, Defendants. }

This case came on to be heard on the pleadings and the agreed statement of facts; after considering the same and hearing counsel thereon—

It is ordered, adjudged, and decreed that the injunction heretofore granted in this cause be made perpetual, and that the defendant pay the costs of these proceedings.

5th September, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 5th September, 1895.

86 *Assignment of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, on His Own Behalf and of Others, Complainant,
vs.
J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. GARDNER, and Other Constables and Officers of the State of South Carolina, Defendants.

And now comes J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, defendants in the above-named cause, and except to the final decree rendered by Hon. C. H. Simonton, United States circuit judge, in the causes and filed on fifth day of September, A. D. 1895, granting a perpetual injunction against the defendants:

1st. Because this suit is in effect a suit against the State of South Carolina, in violation of the eleventh amendment to the Constitution of the United States.

2nd. Because the bill presents no question arising under the Constitution or laws of the United States.

3rd. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of the
87 matters and things alleged in the bill, even if the allegations are true.

4th. Because the complainant has not in and by his said bill made or stated a case to entitle him in a court of equity to any relief against them or either of them as to the matters contained in the said bill or any of such matters.

5th. Because his honor erred in rendering a decree for perpetual injunction against others than the defendants named in the bill; and, further, in enjoining perpetually those officers from seizing ales, wines, and liquors from others than the complainant, James Donald.

6th. Because his honor erred in holding that the provisions of the act of the General Assembly of South Carolina approved 2nd day of January, 1895, commonly known as the dispensary law, forbidding a citizen of the State from importing ales, wines, and liquors for his own use from other States or foreign countries, are not the lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and interstate commerce acts of Congress.

7th. Because his honor erred in holding that the provision of the dispensary law forbidding a citizen to import alcoholic liquors for his own use and consumption, the products of other States, discriminates against the products of other States.

8th. Because his honor erred in holding that the provision of the act permitting the chief dispenser to purchase alcoholic liquors in other States and to import them into this State for sale, for use and consumption, and forbidding all other persons from so purchasing and importing for their individual use and consumption, discriminates against all other citizens of the State.

88 9th. Because his honor erred in holding that the provisions of the dispensary act makes a discrimination against all persons in the trade in other States who are not patronized by the State dispenser, in that they are forbidden to seek customers within the State and to enjoy a commercial intercourse secured to others in the State.

10th. Because they submit that the provisions of the dispensary law forbidding citizens from importing into the State ales, wines, and liquors from other States for their own use and consumption are the lawful exercise of the police power of the State and are not in contravention to the Constitution of the United States or of the interstate commerce acts of Congress, but are authorized by the same.

WM. A. BARBER,
Attorney General of S. C., Solicitor for Defendants.

Filed 6th September, 1895.

89 *Petition for Appeal.*

United States of America, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

James Donald, on His Own Behalf and of Others, Complainant,
vs.
J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, and Other Constables and Officers of State of South Carolina, Defendants.

To the honorable judges of the circuit court of the United States for the district of South Carolina:

J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner, parties to the above-entitled cause, present and file this their petition for an appeal to the Supreme Court of the United States from the final decree rendered by Hon. C. H. Simonton in the above-entitled cause on the 5th day of September, A. D. 1895, granting a perpetual injunction.

Hereto annexed and herewith filed with the clerk of the said court of the United States for the district of South Carolina is an assignment of errors to the said final decree which sets out separately and particularly each error asserted and intended to be urged.

WM. A. BARBER,
Attorney General, Solicitor for Defendants.

Filed 6th September, 1895.

90 *Allowance of Appeal.*

Prayer of the petition granted and appeal allowed.
6th September, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 6th September, 1895.

91 *Appeal Bond and Approval.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court. In Equity.

JAMES DONALD, on His Own Behalf and of Others, Complainant,
vs.
J. M. SCOTT, M. T. HOLLEY, SR., E. C. BEACH, and R. M. GARDNER, and Other Constables and Officers of State of South Carolina, Defendants.

Know all men by these presents that we, John Gary Evans and W. D. Mayfield, are held and firmly bound unto James Donald, party plaintiff in the above case, in the penal sum of two hundred and fifty dollars ($250.00); to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Columbia, S. C., on the 31st day of July, A. D. 1895.

Whereas an appeal has been allowed to J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner on their behalf from the final decree rendered by Honorable C. H. Simonton, United States circuit judge, in the above-stated case, granting a perpetual injunction:

Now, the condition of the above obligation is such that if the above-bound J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M.
92 Gardner shall prosecute their said appeal to effect and shall answer and pay all costs incurred by them if they fail to make their said appeal good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

JNO. GARY EVANS. [L. S.]
W. D. MAYFIELD. [L. S.]

Signed and sealed in the presence of—
W. W. HARRIS.

STATE OF SOUTH CAROLINA,
—— *County.*

—— ——, — severally duly sworn, say each for himself that he executed the foregoing bond or obligation, and that he is worth the sum of two hundred and fifty dollars ($250.00) over and above all his debts and liabilities known to him, exclusive of property exempt from execution.

JNO. GARY EVANS.
W. D. MAYFIELD.

Sworn to and subscribed before me this 31st day of July, A. D. 1895.

C. P. TOWNSEND. [L. S.]
Notary Public.

Approved:
CHARLES H. SIMONTON,
Circuit Judge.

6th September, 1895.

Filed 6th September, 1895.

93 United States of America to James Donald, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 2nd Monday of October, A. D. 1895, pursuant to an appeal filed in the office of the clerk of the United States circuit court for the district of South Carolina, wherein J. M. Scott, M. T. Holley, Sr., E. C. Beach, and R. M. Gardner are appellants and the above-named James Donald, to whom this citation is addressed, is appellee, to show cause, if any there be, why the decree and order of the said circuit court filed on the sixth day of September, A. D. 1895, in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

This citation, together with said appeal, is hereby made returnable on the 10th day of January, A. D. 1896.

Witness the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, this the 11th day of December, A. D. 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Service acknowledged Dec. 11, 1895.

BRYAN & BRYAN,
Att'ys for Complainants.

Filed 11 Dec., 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

94 *Agreement of Counsel as to Record on Appeal.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

Circuit Court, Fourth Circuit. In Equity.

JAMES DONALD, Complainant, }
vs. }
J. M. SCOTT *et al.* }

It is agreed between the counsel in this cause that the following records shall constitute the transcript of record for the Supreme Court of the United States in the above-entitled cause:

1. Bill. Subpœna. Order amending bill. Amended bill. Rule to show cause for temporary injunction. Return to rule. Opinion of court. Preliminary injunction.
2. Answer. Replication.
3. Statement of facts for hearing by court.
4. Final decree.
5. Assignment of errors and petition for appeal.
6. Citation. Bond.

BRYAN & BRYAN,
Complainant's Solicitors.
WM. A. BARBER,
Att'y Gen'l, for Def'd'ts

Filed 11th Dec., 1895.

95 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of James Donald, complainant, against J. M. Scott, M. T. Holley, Sr., R. M. Gardner, and E. C. Beach, as agreed upon by counsel to constitute the record on appeal rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 17th day of December, A. D. 1895.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,147. S. Carolina C. C. U. S. Term No., 410. J. M. Scott, M. T. Holley, Sr., E. C. Beach, & R. M. Gardner, appellants, *vs.* James Donald. Filed January 17, 1896.

165-167

SUGGESTION AND MOTION.

165-107

Supreme Court of the United States,

OCTOBER TERM, 1896

No. 410.

J. M. SCOTT, M. T. HOLLEY, Sr., E. C. BEACH,
and R. M. GARDNER, Appellants,

vs.

JAMES DONALD.

APPEAL

FROM THE

Circuit Court of the United States

FOR THE DISTRICT OF SOUTH CAROLINA.

COLUMBIA, S. C.
CHARLES A. CALVO, JR., PRINTER.
1896.

Supreme Court of the United States.

No. 410.

J. M. SCOTT, M. T. HOLLY, Sr., E. C. BEACH, and
R. M. GARDNER, Appellants,

vs.

JAMES DONALD.

To J. P. K. Bryan, Esq., Solicitor for Complainant, James Donald:

You will take notice that on the call of the above entitled case in the Supreme Court of the United States, the undersigned, as Attorney-General of South Carolina, representing the appellants, will submit to the Court the suggestion and motion, a copy of which is hereto attached, and which has been lodged in the office of the Clerk of said Court.

WM. A. BARBER,
Attorney-General of South Carolina,
Attorney for Appellants.

IN THE

Supreme Court of the United States.

No. 410.

J. M. SCOTT, M. T. HOLLY, Sr., S. C. BEACH, and
R. M. GARDNER, Appellants,

vs.

JAMES DONALD.

And now comes the Attorney-General of the State of South Carolina, without submitting the rights of the State to the jurisdiction of this Court, and suggests to the Court and gives it to understand and be informed, that the General Assembly of the State of South Carolina, at its last session, passed an Act entitled "An Act to provide for the election of a State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in this State, and prescribe further penalties for violation of the Dispensary Law and to police the same," which was approved by the Governor of the State on March 6th, 1896, a copy of which said Act is hereto attached.

Wherefore, respectfully submitting that the enactment of said Act supersedes and repeals parts of the Act "To further declare the law in reference to, and further regulate the use, sale, consumption, transportation and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same," approved January 2d, 1895, he respectfully moves that the said Act be considered by the Court in the determination of the appeal in this case.

WM. A. BARBER,
Attorney-General of South Carolina.

DISPENSARY LAW.

An Act to Provide for the Election of a State Board of Control, and to Further Regulate the Sale, Use, Consumption, Transportation, and Disposition of Intoxicating and Alcoholic Liquors or Liquids in the State, and Prescribe Further Penalties for Violation of the Dispensary Laws, and to Police the Same.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association, or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer), or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment in the discretion of the court for each offence. All such liquors, except when bought from a State officer authorized to sell the same or in possession of one,

IN THE
Supreme Court of the United States.

No. 410.

J. M. SCOTT, M. T. HOLLY, Sr., S. C. BEACH, and
R. M. GARDNER, Appellants,

vs.

JAMES DONALD.

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WM. A. BARBER,
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DISPENSARY LAW.

AN ACT TO PROVIDE FOR THE ELECTION OF A STATE BOARD OF CONTROL, AND TO FURTHER REGULATE THE SALE, USE, CONSUMPTION, TRANSPORTATION, AND DISPOSITION OF INTOXICATING AND ALCOHOLIC LIQUORS OR LIQUIDS IN THE STATE, AND PRESCRIBE FURTHER PENALTIES FOR VIOLATION OF THE DISPENSARY LAWS, AND TO POLICE THE SAME.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association, or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer), or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment in the discretion of the court for each offence. All such liquors, except when bought from a State officer authorized to sell the same or in possession of one, and having been duly tested by the chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health, and safety of the State; and all alcoholic liquors in this State not having been tested by the chemist of the South Carolina College and found to be chemically pure, are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health, and safety of the State, and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner.

SEC. 2. A board, consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act. The terms of office of the board so elected shall be for one, two, three, four, and five years, respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of book-keeping and accounting as they may deem advisable, and shall elect a clerk or book-keeper, who shall hold his office during the pleasure of the board, and shall receive as compensation for his services a salary of $1,500 per annum. The State Board of Control, under such rules and regulations as may be adopted by said board, shall purchase all liquors for lawful use in this State, and shall have the same tested and declared to be pure, as hereinbefore and hereinafter provided.

SEC. 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful use in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of $2,500, payable from the dispensary fund upon the warrant of the State Board of Control. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the county dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. Each county dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or county dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of $10,000, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the county dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates, any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company, or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband, and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offence, to be recovered against said common carrier in any court of competent jurisdiction by summons and complaint, proceedings to be instituted by the solicitor of any circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500, and imprisonment in the penitentiary for not less than one year for each offence.

SEC. 4. The State Commissioner shall, before shipping any liquors to dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same; and it shall be unlawful for the dispenser to break any of such packages, or open the same for any reason whatsoever. He shall sell the package only, and no person shall open the same on the premises: Provided, This section shall not apply to malt liquors shipped in cases or kegs, or bottles thereof shipped in barrels; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: Provided, The same shall not be drunk on the premises. Dispensers shall open their places of business, and sell only in the day-time, under such rules as may be made by the State Board of Control, or by the County Board of Control, with approval of the State Board of Control.

SEC. 5. It shall be the duty of the State Board of Control to appoint a County Board of Control, composed of three persons, believed by the said board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for the term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State Board of Control. Said County Board of Control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective counties: Provided, All such rules shall be submitted to the State Board and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other county officers without fees therefor.

SEC. 6. Applications for positions of county dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he has been engaged two years previous to filing petition; that he is a qualified elector of this State and a resident of the county; that he has never been adjudged guilty of violating the law in relation to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages, and costs that may be assessed or recorded against him for violations of such laws during the term for which said appointment is made, and will not sell intoxicating liquors at a price other than that fixed by the State Board of Control. Said bond shall be for the use of the State and county or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the solicitor or any person for whose benefit the same is given; and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs, and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer, or other person under the provision of the law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the dispensary. Said bond shall be approved as other official bonds for the county.

SEC. 7. There may be one or more county dispensers appointed for each county, the place of business of each of whom shall be designated by the county board, but the State Board of Control must give consent before more than one dispenser can be appointed in any county; and when the county board designates a locality for a dispensary, twenty days public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such dispensary is to be located, to prevent its location in such township by signing a petition or petitions, addressed to the county board, requesting that no dispensary be established in that township. The county board may in its discretion locate a dispensary elsewhere than in an incorporated town in the counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: Provided, however, That any county, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such county, town or city wishing a dispensary therein, being filed with the County Supervisor or town or city council respectively, they shall order an election, submitting the question of dispensary or no dispensary to the qualified voters of such county, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a dispensary, then a dispensary may be established in said county, town or city: Provided, That dispensaries may be established in the counties of Williamsburg, Pickens, and Marion, and at Seneca and other towns now incorporated in Oconee County, without such election or compliance with the other requirements of this Act: Provided, That nothing in this Act contained shall be so construed as to prohibit persons resident in counties which shall elect to have no dispensary from procuring liquors from dispensaries in other counties, or county dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, That nothing in this Act shall be construed to repeal an Act entitled "An Act to allow the opening of dispensaries in Pickens and Oconee Counties," approved December 18th, 1894.

SEC. 8. If the application for the position of dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe an oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, ————————, do solemnly swear (or affirm) that I will well and truly perform all and singular the conditions of the within bond, and keep and perform the trusts confided in me to purchase, keep, and sell intoxicating liquors. I will not sell, give, or furnish to any person any intoxicating liquors otherwise than is provided by law, and especially I will not sell or furnish intoxicating liquors to any minor, intoxicated person, or persons who are in the habit of becoming intoxicated; and I will make true, full, and accurate returns to the County Board of Control, on the first Monday of each month, of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns show every sale and delivery of such liquors made by me, or for me, during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Act provided; and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Appointments made under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing, by order of the County Board of Control; and upon the removal of any county dispenser, or upon the demand of the County Board of Control, he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or county. Said County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of the employees who may violate any of the provisions of this Act. On the death, resignation, or removal of a county dispenser, or expiration of his term of office, the county board shall appoint his successor.

SEC. 9. The County Board of Control shall use as their office the office of the County Supervisor of their county, and shall elect one of their number as chairman and a clerk of the said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds, and other papers pertaining to the appointment of dispensers, and keep suitable books in which bonds shall be recorded. The books shall be furnished by the county like other public records. The County Board of control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the chairman, and each member of the board shall receive a per diem of two dollars, and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the county of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the county dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located, such settlements to be made quarterly: Provided, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city, and use it to pay State constables or else turn it into the county treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer, and at the same time the County Dispenser shall forward to the State Board of Control a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all the moneys received by him belonging to the county and to the municipal authorities in which the dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlements heretofore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September, and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and forward the same to the State Board of Control. The mayor or intendant of the city or town in which the dispensary is located may also extend such settlement: Provided, That in counties where dispensaries are established in other than incorporated cities or towns, the county shall get all profits that would otherwise go to such cities and towns: Provided, That in the county of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

SEC. 10. Before selling or delivering any intoxicating liquors to any person, a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age, and the residence of the signer, for whom or whose use it is required, the quantity and kind required, and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk, who receives and files the requests. But the requests shall be refused if the County Dispenser filling it, personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor, he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor, and is not in the habit of using intoxicating liquors to excess.

SEC. 11. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispensers from time to time as the same shall be needed, and shall be numbered consecutively by the auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on each book, and receipt taken therefor and preserved in his office. The dispenser shall preserve the application in the original form consecutively by the auditor. When return therefor is made, the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be used in the quarterly settlements between such dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for, before other blanks are issued to such County Dispenser.

SEC. 12. On or before the tenth day of each month, each dispenser shall make full returns to the County Auditors of all requests filled by him and his clerks during prceeding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a notary public, which shall be in the following form, to wit: I,——, being duly sworn, state on oath that the requests for liquors herewith returned are all that were received and filled at my place of business under my permit, during the month of——, 189—; that I have carefully preserved the same, and that they were filled up, signed, and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month, except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

SEC. 13. Upon failure of any dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said county dispensers at the next succeeding term of court in the county in which such appointment is held; and any dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred ($500) dollars and be imprisoned for six months. If any dispenser or his clerk shall procure any intoxicating liquors from any other person except the State Commissioner, or if he or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the State Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle, or package, he or they shall be guilty of a misdemeanor, and be fined in a sum of not less than $200 or imprisonment for not less than six months. If any Connty Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, county or municipality, he shall, upon conviction, be punished as in case of breach of trust with fraudulent intent.

SEC. 14. That any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquor to any person without first requiring the written requests therefor to be filled out and signed, as provided by law or the regulations of the State Board of Control, that on such information given by any person with sufficient evidence, it shall be the duty of the solicitor to bring suit in the name of the county for $200 damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable jointly and severally, together with all costs and judgments pertaining to the suit. And on judgment given against him, the said County Dispenser shall be immediately deprived of his office as dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damages, costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employee or other person, under the provisions of the law: Provided, That if the said County Dispenser can show to the satisfaction of a jury by way of defence that the said intoxicating liquor was obtained from him by the infant, intoxicated person or persons in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation shall be guilty of a misdemeanor, and be fined in a sum of not less than $200 or imprisonment for not less than six months.

SEC. 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense any liquors containing alcohol for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State, shall first obtain from the State Board of Control a permit or license so to do; and it shall be unlawful for any such person, firm, association or corporation to manufacure or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power, upon any violation of this Act, to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in section 3: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector or constable to enter and examine his place of business and its appurtenances at such times as the inspector or constable may deem proper, shall forfeit his permit or license.

SEC. 16. Every dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the county, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand, of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him, on notice duly served that the same will be required as evidence.

SEC. 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be *prima facie* evidence that the person or persons paying said tax, and the parties displaying such notices, are acting in violation of this Act; and unless said person or parties are selling under appointment as prescribed by this Act, they shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States courts of illicit sales of liquors shall be taken as *prima facie* evidence of violation of the provisions of this Act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States courts shall, by reason of conviction, forfeit the permit or license granted him by the State Board of Control, in addition to the other penalties herein provided.

SEC. 18. Licensed druggists conducting drug stores and manufacturers of proprietary medicines are hereby authorized to purchase of dispensers of the counties of their residence intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures, and extracts that cannot be used as a beverage. The dispenser shall not charge such licensed druggists more than ten per cent. net profits for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity so used, and quarterly they shall make and file with the County Auditor and with the County Board of Control sworn reports, giving a full and true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange, or in any manner dispose of, said liquors for any purpose other than authorized by this section, he shall, upon conviction, forfeit his license, and be liable to all penalties, prosecutions, and proceedings at law and in equity provided against persons selling without authority, and upon such conviction the Clerk of the Court shall, within ten days after such judgment or order, transmit to the Board of Pharmaceutical Examiners the certified record thereof, upon receipt of which the said board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: Provided, That nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: And provided, further, That the State Commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at not exceeding ten per cent. above the net cost.

SEC. 19. If any person shall make any false or fictitious signature, or sign any name other than his or her own to any paper required to be signed by this Act, without being authorized to do so, or make any false statement in any paper, request or application signed to procure liquor under this Act, the person so offending shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $25 or be imprisoned not more than thirty days.

SEC. 20. If any dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the State Commissioner, or made any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor, and upon conviction, be punished by a fine of $500 or six months imprisonment.

SEC. 21. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist or abet another in receiving, bartering or selling any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, That the State Board of Control shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort, from being considered nuisances or as violating this Act, by reason of any manager of such hotels dispensing liquors bought from the dispensary, by the bottle, either night or day; but before any such exemption shall be granted, the State Board of Control shall require the manager of such hotel to give a good and sufficient bond in the penal sum of $3,000, conditioned for the observance of all the rules, regulations, and restrictions prescribed and imposed by the said board, and with all the requirements of this Act, and it shall be lawful for any constable or officer thus employed under this Act to enter such hotel and search it for contraband liquors at any time, day or night, without a warrant.

SEC. 22. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any person may go before any magistrate in the county and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistants, if any, and such magistrate shall direct such arrest warrant either to the Sheriff of the county or to any special constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon and dispose of them as provided in Section 31, and to seize all vessels, bar fixtures, screens, bottles, glasses, and appurtenances apparently used, or suitable for use, in retailing liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the county, he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the county, and immediately transmit the other to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to any Circuit Judge at chambers within that circuit, or to the nearest Circuit Judge, if there be none in that circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the court. Such Circuit Judge is hereby authorized, empowered, and required to grant the said restraining order without requiring a bond or undertaking, upon the hearing or receipt by him of said papers from the court of the said magistrate by the hands of the solicitor; and any violation of said restraining order before the trial of the case shall be deemed a contempt of court, and punished as such by said judge or court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they, or any of them, shall be deemed guilty of a misdemeanor, punishable by imprisonment in the county jail for a term of not less than three months, or a fine of not less than $200, or both, in the discretion of the court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory, as provided for in this Act, as when other liquors are seized.

Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending.

No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than $200 nor more than $1,000, and by imprisonment not less than ninety days nor more than one year.

In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Act, the court, or, in vacation, any judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a *prima facie* case for the State. At the hearing upon the charge of contempt, evidence may be oral or in the form of affidavits, or both.

The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers.

The Clerk of Court shall, upon the application of either party, issue subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas.

That when any solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of the preceding section, or by any of the provisions of this Act, the Attorney General, on his own motion, or by request of the Governor, shall in person, or by his assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the solicitor for malfeasance or misfeasance in office, or for official misconduct, or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such solicitor.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney General.

Any duty herein imposed upon a solicitor may be performed with equal force and effect by the Attorney General or other person authorized by him to perform such duty.

SEC. 23. The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a justice, judge or magistrate, or mayor or intendant of a city or town, to whom application is made, empowering a constable, or any person who may be deputized, to enter the said place by day time or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

SEC. 25. That any of the liquors set forth in section 1 of this act, which are contraband, may be seized and taken without warrant by any constable, sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided: Provided, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

SEC. 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any court in this State.

SEC. 27. That the proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding *in rem* unless otherwise herein provided.

SEC. 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids, and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than $100 nor more than $500, or imprisonment for the term of not less than six months nor more than one year, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence *prima facie* of guilt. The books and way bills of the common carrier may be examined to trace said liquors to the shipper, who shall be liable, upon conviction, in like a penalty.

SEC. 29. That all constables, deputy constables, sheriffs, magistrates or municipal policemen shall have the right, power, and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours, without any warrant or process whatever. Any constable, deputy constable, sheriff or magistrate who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any sheriff or magistrate seizing any alcoholic liquors or liquids as required by this section shall be paid one-half the value of said liquors or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law.

SEC. 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than $100 nor more than $500, or imprisoned for a term of not less than three months nor more than twelve months.

SEC. 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore made as being subject to forfeiture under any provisions of this Act or any former Act, which, in the opinion of the officer or person making the seizure, are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the county wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the county where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the State Board of Control a claim stating his interest in the articles seized, and may execute a bond to the State Board of Control, in the penal sum of $500, with sureties, to be approved by the said State Board of Control, conditioned that in the case of condemnation of the articies so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control, he shall transmit the same with the duplicate list or description of the goods seized to the solicitor of the circuit in which such seizure was made, and the said solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State chemist, and if pure shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than fifty dollars of such illicit liquors or liquids, the same may be advertised with other quantities at Columbia by the State Board of Control, and disposed of as hereinbefore provided: Provided, further, That the claimants of such liquors may give bond in $100 as when the value is fifty dollars or over, and shall bear the burden of showing before a magistrate that they have complied with the law, and that the liquor is not liable to seizure.

SEC. 32. That all fermented, distilled, or other liquors or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law, to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

SEC. 33. That no person, except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of $100, or imprisonment for thirty days, for each offence, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation, at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall, upon conviction, be sentenced to pay a fine of not less than $100 nor more than $500, or imprisonment for a term of not less than three months nor more than twelve months: Provided, That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: Provided, That this section does not apply to liquors purchased from a dispensary, and bearing the proper label or certificate. All liquors in this State, except dispensary liquors, and those passing through this State, consigned to points beyond this State, shall be deemed contraband, and may be seized in transit without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State, for sale or use therein, except by the dispensary, shall suffer a penalty of $500 and costs for each offence, to be recovered by the Solicitor of the circuit or the Attorney General, by an action brought therefor in any court of competent jurisdiction. The State constable, sheriff, municipal police or any lawful constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant, and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than $100 nor more than $500, or imprisonment for a term of not less than three months nor more than twelve months.

SEC. 34. That any person detected openly or in the act of violating any of the provisions of this Act shall be liable to arrest without warrant: Provided, A warrant shall be procured within a reasonable time thereafter.

SEC. 35. That in case of conviction of violations of any of the sections of this Act where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the chemist and purchased from a State officer authorized to sell them, are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31: Provided, That this section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto.

Any persons affixing or causing to be affixed to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by the State Board of Control shall, for each offence, be liable to a penalty of ten days imprisonment or $25 fine.

SEC. 36. Every person who dispossesses or rescues from a constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or pay a fine of not less than $100 nor more than $500.

SEC. 37. Any person handling contraband liquor in the night time, or delivering the same, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than $100 nor more than $500.

SEC. 38. Any wagon, cart, boat, or any other conveyance, together with horses, mules, or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold, and the proceeds sent to the State Treasurer.

SEC. 39. Every dispenser, when he sells a package containing liquor, shall put a cross mark in ink on the label or certificate thereon, extending from the top to the bottom, and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

SEC. 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the dispensary, whether shipped as released or not, such penalty to be recovered by action in any court of competent jurisdiction.

SEC. 41. That it shall be unlawful for any person to take or to solicit orders, or to receive money from other persons, for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for liquors to be purchased and shipped from the dispensary, and any person violating this section, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a term of not less than three months nor more than twelve monts, or by a fine of not less than $100 nor more than $500.

SEC. 42. It shall be the duty of sheriffs, deputy sheriffs, and constables having notice of the violation of any of the provisions of this Act to notify the Circuit Solicitor of the fact of such violation, and to furnish him the name of any witness within their knowledge by whom such violation can be proven. If any such officer or solicitor shall willfully fail to comply with the provisions of this section, he shall, upon conviction, be fined in a sum not less than $100 nor more than $500, and such conviction shall work a forfeiture of the office held by such person; and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

SEC. 43. That in any indictment for the sale of intoxicating liquors, it shall be competent to charge a series of sales on the same or on divers days up to the finding of the true bill to one person, or to different persons, naming one and stating the others to be unknown, in the same court, as was formerly the practice in indictments for retailing liquor without license in this State, and the prosecuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or of all the sales will sustain a verdict: Provided, Upon a trial and conviction or acquittal, no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and the punishment shall be in such case as for one sale: Provided, further, That this section shall not be so construed as to prevent the prosecuting officer from giving out several bills of indictment for several sales in the first instance, if he thinks best to do so.

SEC. 44. That whenever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts, and grounds of belief upon which the affiant bases his belief: Provided, That it shall not be necessary to set forth the sources of information, the facts and grounds of belief, in the affidavit upon which a warrent of arrest shall issue, but it shall only be necessary in cases of search warrants.

SEC. 45. That Chapter I., Title VII., of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said chapter.

SEC. 46. The Governor shall have authority to appoint one or more State constables at a salary of not more than $2 per day and such expenses as the Governor may deem proper when on duty, and two chief constables at not more than $3 each per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the dispensary fund in the same manner as the salary of the State Commissioner.

SEC. 47. That this Act shall be a public Act, and shall go into effect immediately upon its approval by the Governor, and that all Acts or parts of Acts inconsistent with this Act be, and are hereby, repealed.

SEC. 48. The State Board of Control elected under this Act shall not take charge until April 1st, 1896.

Approved March 6th, 1896.

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JAMES H. McKENNEY,
Clerk.

165-107

BRIEF FOR APPELLANTS.

Supreme Court of the United States,

OCTOBER TERM, 1896.

No. 410.

J. M. SCOTT, M. T. HOLLEY, Sr., E. C. BEACH,
and R. M. GARDNER, Appellants,

vs.

JAMES DONALD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

WILLIAM A. BARBER,
Attorney-General of South Carolina,
For Appellants.

Supreme Court of the United States,

OCTOBER TERM, 1896.

No. 410.

J. M. SCOTT, M. T. HOLLY, Sr., E. C. BEACH, and
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vs.

JAMES DONALD.

**Brief submitted in behalf of Appellants by
Wm. A. Barber, Attorney-General
of South Carolina.**

ABSTRACT OF THE CASE.

This cause was brought on the equity side of the Circuit Court of the United States for the District of South Carolina, by James Donald, a citizen of South Carolina, against J. M. Scott, M. F. Holley, E. C. Beach and R. M. Gardner, also citizens of South Carolina and constables appointed under the Act commonly known as the Dispensary Law, to enjoin the defendants, as State constables, from seizing any ales, wines and liquors imported into the State by the complainant for his personal use and consumption. The bill was filed by the complainant on his own behalf and on behalf of all other persons in the State of South Carolina as importers for their own use and consumers of wines, ales, beers and spirituous liquors, the products of other States and foreign countries. It sought to restrain the defendants and all other constables, sheriffs, municipal policemen or other executive officers of the State of South Carolina acting under the Dispensary Law.

Upon the filing of the bill a notice was ordered to be served upon the four defendants named to show cause, on a day mentioned, why a writ of temporary injunction should not be granted. In their return to this rule, the defendants denied the jurisdiction of the Court, upon the grounds: (1) That the suit is in effect one against the State; (2) that the bill presents no question arising under the Constitution and laws of the United States; and (3) that the allegations in the bill show no ground of equity jurisdiction. These jurisdictional objections were overruled and a writ of temporary injunction was granted. The defendants answered the bill in due time. At the hearing of the cause the injunction was made perpetual, the Circuit Judge holding that so much of the Dispensary Law as forbids a citizen to purchase in other States and to import into this State alcoholic liquors for his own use and consumption, the products of other States, discriminates against the products and citizens of other States, and also against the citizens of this State, and is to that extent null and void. Then, it will be observed that the only question raised was the prohibition of importation for personal use, and this is the only feature of the law now before the Court. An appeal was duly taken and an assignment of errors filed, raising the following questions:

1st. Whether this is in effect a suit against the State of South Carolina.

2d. Whether the complainant has plain and adequate remedies at law.

3rd. Whether the bill shows affirmatively upon its face that the United States Circuit Court had jurisdiction.

4th. Whether the bill presents a question arising under the Constitution and laws of the United States.

5th. Whether the provisions of the Dispensary law of South Carolina prohibiting citizens from importing ales, wines and liquors into the State for their personal use and consumption are in the lawful exercise of the police power of the State.

6th. Whether the Court below, if warranted in making an order of injunction at all, was authorized to grant a perpetual injunction restraining other officers than those named in the bill; and also restraining them from seizing ales, wines and liquors imported into the State by others than the complainant, James Donald.

It is the contention of the appellants that the Court had no jurisdiction to grant the perpetual injunction, and that the Act, commonly known as the Dispensary Law of South Carolina, in so far as it prohibits persons from importing alcoholic liquors into the State for personal use and consumption, is in the lawful exercise of the police power of the State, and is not in conflict with the Constitution and interstate commerce laws of the United States.

FIRST PROPOSITION.

This is in effect a suit against the State of South Carolina. A true test of this question, as deduced from all the decisions of this honorable Court on the subject, is whether the State is a real and indispensable party, and whether the judgment of the Court can be enforced without affecting the interest of the State.

In *Osborn* v. *Bank* it was held that the State must be a party on the record to be exempt from suit.

In *Davis* v. *Gray*, a divided Court adopted the suggestions of Mr. Chief Justice Marshall, and said the case of *Osborn* v. *Davis* decides three things, to wit:

1. A Circuit Court of the United States in a proper case in equity may enjoin a State officer from executing a State law in conflict with the Constitution or a Statute of the United States, when such execution will violate rights of plaintiff.

2. When the State is concerned, the State should be made a party if it could be done. That it cannot be done is a sufficient reason for the omission to do it, and the Court may proceed to decree against the officers of the State as if the State were a party to the record.

3. The Court will not look beyond the record to see who are parties to the suit.

Then comes the case of *Poindexter* v. *Greenhow*, 114 U. S., 270: holding, that the State might be considered a party and exempt from suit, although not appearing on the record.

The case of *Louisiana* v. *Jumel*, 107 U. S., 711, modified the doctrine and held that when the State is the real party in interest, and the decree of the Court cannot be carried into execution without affecting the State, then it is a suit against the State.

In *Elliott* v. *Witty*, 107 U. S., 711, and *Cunningham* v. *Macon & Brunswick, R. R.*, 109 U. S., 711, the same doctrine was held as in *Louisiana* v. *Jumel*.

Then the *Virginia Coupon cases* followed, 114 U. S., 270: in which it was held, that the law was unconstitutional, and a tax collector attempting to enforce it violated the rights of plaintiff, for which he was personally answerable—that as the law of Virginia was void, it stripped the tax collector of his official character, and it was not a suit against the State.

Then followed *In Re Ayers*, in which it was held that when an officer did any act to the injury of another's rights he could not justify under an unconstitutional law a trespass committed by him, not in his official but in his individual capacity, and in such a case the State was not the real or an indispensable party.

Then followed the cases of *U. S.* v. *Lee* and *Schwarb* v. *Mo.*, in which it was held that the officers of the U. S. Government could not justify their possession of land by showing authority from the United States to take possession, in an action of ejectment brought by the real owner: that the United States was not the real or an indispensable party.

In Re Tyler, 149 U. S., 191, Mr. Chief Justice Fuller held: That the Circuit Courts of the United States will restrain a State officer from executing an unconstitutional statute of the State, when to execute it would be to violate rights and privileges of the complainant that had been guaranteed by the Constitution and would do irreparable damage and injury to him, has never been departed from.

This case Mr. Chief Justice Fuller expressly based upon *Pennoyer* v. *McConnaughy*, 140 U. S., 1, and following that case said: " Where a suit is brought against defendants who claim to act as officers of the State, and, under color of an unconstitutional statute, commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the State: or, for compensation for damages: or, *in a proper case for an* injunction to prevent such wrong and injury: or, for a mandamus in a like case to compel the performance of a plain ministerial duty, such is not, within the meaning of the Amendment, an action against the State."

The whole question turns upon *what is a proper case*, because it is only in such a case that Equity can interfere by injunction.

Under all the cases, then, what is the legal position of an officer when he acts under an unconstitutional statute? He is stripped of his official character, and occupies the position of a trespasser. *As such he is sued individually and not officially.*

But in the case at bar the suit is against officers *eo nomine.* The complainant seeks a single injunction that will serve to restrain the whole Executive branch of the State Government. In fact, his position is that of asking judicial relief which will be tantamount to a repeal of so much of the law in question as affects his supposed rights. The bill does not stop with those officers who are alleged to have trespassed upon complainant's property, but, in sweeping terms, asks an injunction against all constables, sheriffs, policemen and other executive officers of the State. Look, if you please, beyond the nominal defendants, and who is the real party in interest? Is it not the whole department of the State government charged with the execution of police measures? In fact, the plain effect of the order of injunction is to control the action of the State of South Carolina. Again, can the judgment of the Court be enforced without affecting the money or property interest of the State? With a view of reducing to a minimum the evils of the liquor traffic, by assuming direct control of it, the State has invested hundreds of thousands of dollars in the Dipensary. To protect the health of her people from deleterious liquors, she has established a rigid system of chemical analysis. To preserve the public peace and good order, bonded officers are required to sell all liquors for lawful consumption by her citizens. All the machinery of the whole system, thus conceived and inaugurated, is largely dependent upon the income of the institution for its maintenance, The inroad made by this injunction breaks the complete safeguard afforded by the law. It opens the gate to impure and hurtful liquors, threatens good order in their use, and directly affects the income of the State for the support of its police regulations. The operations of the State government itself are thus interfered with. It amounts to a mandate to the State to desist from the seizure of liquors declared contraband by a Statute which has been held valid by her own Supreme Court.

We, therefore, respectfully submit that this injunction does not operate upon the defendants as individuals, but through them and other officers upon the State, controlling her action, and directly affecting her interst alone.

SECOND PROPOSITION.

THE COMPLAINANT HAD A PLAIN AND ADEQUATE REMEDY AT LAW, AND THE COURT WAS WITHOUT AUTHORITY TO GRANT THE ORDER OF INJUNCTION.

Section 723 of Revised Statutes of United States provides: "Suits in equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law."

"A legal remedy within the meaning of the rule, which will operate as a bar to relief in equity by an injunction, means a legal remedy which can be brought in the Courts of the same State, and not a remedy to be employed by going into a foreign jurisdiction."—High on Inj., Sec. 29.

"The mere existence, however, of a legal remedy is not in itself sufficient ground for refusing relief in equity by injunction. To deprive a plaintiff of the aid of equity, it must also appear that the remedy at law is plain and adequate—in other words, that it is as practical and efficacious to secure the ends of justice and its proper and prompt administration as the remedy in equity."—*Barber* v. *Barber*, 21 How., (U. S.,) 74.

"If any action at law will afford a complete and adequate remedy, the case falls within the principle which tests the right to resort to equity, and the Court will refuse to intervene by way of injunction."—High on Inj., Sec. 30; *Watson* v. *Sutherland*, 5 Wall., (U. S.,) 74.

It cannot be said that the blending of law and equity Courts in South Carolina by the Code can affect this doctrine.

In *Mills* v. *Cohen*, 150 U. S., 202, held:

"The jurisdiction of Federal Courts sitting as Courts of Chancery cannot be enlarged or diminished by State legislation." Also in *Scott* v. *Neely*, 140 U. S., 100.

The complainant in his bill alleges that certain liquors, which were imported into the State of South Carolina for his own use and consumption, were seized by the defendants, claiming to act as constables of the State of South Carolina; that he has brought actions at law in the United States Circuit Court against them for damages, but that the defendants are insolvent, and judgments against them will be fruitless, and for this reason he has been irreparably injured; that he will be subjected to vexatious litigation by a multiplicity of suits if the injunction is not granted.

It will be observed that the complainant has made no effort to redress the wrong complained of in the State Courts, but has brought his actions at law in the United States Circuit Court. By instituting an action for the recovery of the possession of the liquors in the State Courts, the case would have been speedily heard and determined, and the property itself recovered if wrongfully seized. If the constables are insolvent, this would have been the adequate and complete remedy most available as well as most efficacious.

Another speedy and adequate remedy was also afforded the complainant under the Dispensary Law itself. See Section 31 of Dispensary Act, approved 2nd January, A. D. 1895. It provides that a claim for any liquors seized by State constables can be made in writing to the State Commissioner, and by giving bond the claimant can get possession of the liquors pending an investigation to condemn them, and the Commissioner is required to institute condemnation proceedings in which the claimant is allowed to contest the right to seize and condemn. From judgments rendered in these proceedings the usual appeals to the higher Courts are allowed.

Here were two adequate and complete remedies afforded the complainant in the State Courts, and neither was resorted to by him. Besides, in either proceeding, to recover possession of the liquors or in resisting the condemnation proceeding, the question of the constitutionality of the Dispensary Act could have been raised and carried by writ of error or appeal from the Supreme Court of South Carolina to the Supreme Court of the United States.

But instead of availing himself of the remedies afforded in the State Courts, he ignores them entirely, and attempts in the United States Circuit Court to assail the constitutionality of the Dispensary Law and nullify it by an injunction. He has endeavored to collaterally attack the law in equity without first exhausting his legal remedies.

This, the 723d Section of the Revised Statutes of the United States, before quoted, prohibits in plain terms.

In fact the complainant has not sought any legal remedy at all in the State Courts, but brings his actions at law in the United States Court for the apparent purpose of laying a foundation for jurisdiction in equity.

In this connection, one of the grounds upon which the Circuit Judge founded the equity jurisdiction of the Court was to prevent a multiplicity of suits. The complainant is not threatened with suits against him. He is the party who has brought the actions, and alleges that he will have, of necessity, to bring other like actions to redress his wrongs. If any vexatious litigation arises, he will be the author of it, and produce it all by failing to employ the legal remedies afforded him in the State Courts.

"An injunction will not lie to prevent a multiplicity of suits, upon a mere allegation of complainant's belief that such suits are intended, or where there is no evidence of threats to bring them, or where the complainant himself was the author of the situation which annoys and troubles him." —Beach on Inj., Sec. 520; *Wolf* v. *Burke*, 56 N. Y., 118.

The complainant has been the author of the very situation which he claims annoys him. He has persisted in ordering liquors more than enough for his own use and consumption, and, when they were seized, instead of resorting to his legal remedies in the State Courts, brought action at law in the United States Court, and then this suit in Equity. He has defied the State and her laws and her Courts, and by so doing has placed himself in his present situation. Does he come into equity with clean hands?

While, ordinarily, a bill will not be entertained to restrain the bringing of vexatious suits until the right involved has been first determined by an adjudication at law, yet when from the very nature of such suits the complainant has no opportunity to establish his right, his bill for an injunction may be maintained without a previous adjudication in a law Court.—Beach on Inj., Sec 520, and cases there cited.

The complainant's grievance as stated in the bill is a trespass on personal property.

"Where repeated trespasses are committed upon real property, or are threatened, an injunction will be in order to prevent a multiplicity of suits.".—Beach on Inj., Sec. 523. And the author says this rule has been applied in New York as to trespasses upon personal property, which is an exception. But before the exception applies, the right to the property should be clearly established at law.

The complainant does not complain so much of the injuries *he* has received, but is attempting to protect alleged public rights more than his own. He appears before the Court in the role of a volunteer to attack the constitutionality of the Dispensary Law, and is really litigating *pro bono publico*, if litigation in the interest of liquor drinking can be so termed.

"An injunction will not be granted on the application of a private person to protect purely public rights."—Beach on Inj., Sec. 13; *Springer* v. *Walters*, 139 Ill., 419.

"The validity of a statute cannot be questioned on the application of a mere volunteer, whose right it does not specially affect."—Cooley's Con. Lim., 196; *Jones* v. *Black*, 48 Ala., 540.

I maintain, therefore, that the complainant had plain, adequate and complete remedies at law; and by failing to avail himself of them, he cannot found a claim to equity jurisdiction upon the prevention of a multiplicity of suits or trespasses, and the Court in this case had no jurisdiction or authority to grant the order of injunction.

THIRD PROPOSITION.

THE BILL OF COMPLAINT IN THIS CASE DOES NOT SHOW AFFIRMATIVELY UPON ITS FACE THAT THE UNITED STATES CIRCUIT COURT HAS JURISDICTION.

"The Federal Courts possess no powers except such as the Constitution and Acts of Congress concur in conferring, and the presumption is, that every case is without their jurisdiction until the contrary affirmatively appears. And since the Act of 1875, it is the duty of a Federal Court to dismiss an action as soon as it satisfactorily appears that it has lost its jurisdiction; and such want of jurisdiction need not be raised by pleadings, but it is the duty of the Court to recognize it, and give it effect of its own motion."—*U. S.* v. *Southern Pacific R. R. Co.*, 49 Fed. Rep., 297; *U. S.* v. *Crawford*, 47 Fed. Rep., 561.

"When the original jurisdiction of a Circuit Court of the United States is invoked upon the sole ground that the determination of a suit depends upon some question of a Federal nature, it must appear at the outset from the declaration or bill of a party suing that the suit is of that character; in other words, it must appear, in that class of cases, that the suit was one of which the Circuit Court at the time its jurisdiction was invoked could properly take cognizance. If it does not so appear, then the Court upon demurrer or motion, or upon its own inspection of the pleadings, must dismiss the suit. It cannot retain it in order to see whether the plaintiff may not raise some question of a Federal nature upon which the right of recovery will depend."—*Turner* v. *Union* v. *Planters Bank*, 152 U. S.; *Colorado Mining Co.* v. *Turck*, 150 U. S., 138.

The bill alleges that the defendants, not as officers, but as individuals and trespassers, forcibly, unlawfully and maliciously seized certain liquors from the complainant, and that to avoid a multiplicity of suits to redress the wrong, and in the absence of a plain and adequate remedy at law, prays that the Court of Equity will restrain these individuals acting as constables, and all other officers, such as sheriffs, policemen, etc., charged with the execution of the laws of the State, from interfering with the right of complainant and all others in the State in like circumstances.

The effect of the order of injunction prayed for in the bill is to enjoin all the officers of the State from enforcing certain provisions of the Dispensary Act, while the suit is not against these officers, but against these individuals as trespassers. This is not a proper case in equity, in which the Court had the jurisdiction and authority to grant the order of injunction, and it so appears on the face of the bill itself.

Further, the bill does not allege that the complainant has been damaged $2,000.00.

The 1st Section of the Act of Congress of 13th August, 1888, is in part as follows:

"That the Circuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution and law of the United States."

It is the settled doctrine of this Court that the inquiry into the jurisdiction of the Circuit Court is limited to the facts appearing on the record in the first instance.

In his bill the complainant alleges he *will be damaged* as much as $2,000.00, but he does not charge that he had been damaged so much at the time of filing the bill. This allegation is not sufficient. In every case it should be charged specifically, so as to give ground for jurisdiction as to amount. The very nature of the alleged trespasses shows that it is impossible for complainant to have been damaged anything like the jurisdictional amount.

FOURTH PROPOSITION.

THE BILL DOES NOT SHOW A FEDERAL QUESTION SO AS TO GIVE JURISDICTION TO THE UNITED STATES CIRCUIT COURT, AND THE ORDER OF INJUNCTION WAS GRANTED WITHOUT AUTHORITY, OR EXCEEDED THE AUTHORITY OF THE COURT.

This brings us properly to the merits of the cause.

The Federal question alleged is, that rights, privileges and immunities to which the complainant is entitled under the Constitution and laws of the United States have been invaded and denied; that the seizure of the liquors under the Dispensary Act was illegal, because the law itself is in conflict with the Constitution of the United States and the Inter-State Commerce Acts of Congress. The sole question is whether so much of the Dispensary Law of South Carolina as prohibits the importation of alcoholic liquors from other States for personal use was enacted in the legitimate exercise of the police power of the State; and, if so, it is above the Constitution and Acts of Congress, and no Federal question is presented.

This leads to the inquiry, What is the police power of a State?

This honorable Court has said that the police power cannot be accurately defined; and, without attempting a definition, I would say it is that great attribute of sovereignty by which a State is justified in its self-protection and self-preservation; and it implies the use of the necessary means for the protection of the correlative and reciprocal rights of the sovereign and the citizen. The present measure of the power of a sovereign State is the full measure of its rights before it joined the federation, except in so far as the provisions of the Federal Constitution or its own people have modified it. We know that the State gave up to the Union the right to regulate commerce, tax imports, declare war, proclaim peace, emit bills of credit, coin money and operate the postoffice. But it gave up no right based upon those fundamental principles not laid down in the Federal Constitution, and which are necessary to the protection of itself, necessary to the safety, comfort and well-being of society, and necessary to the protection of its citizens against the evils of intemperance, pauperism and crime. The police power is among the reserved powers of the State.—*New York* v. *Miln*, 11 Peters, 102.

It is described as the power to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and property.—*Barber* v. *Connelly*, 113 U. S., 31.

In Black on Intoxicating Liquors, Section 24, the police power is thus spoken of: "It cannot be doubted, however, that the origin of this power must be sought in the very purpose and framework of organized society. It is fundamental and essential to government. It is a necessary and inherent attribute of sovereignty. It antedates all laws, and may be described as the assumption on which Constitutions rest; for the State, whether we regard it as an association of individuals or as a moral organism, must have the right of self-protection and the power to preserve its own existence in safety and prosperity, else it could neither fulfill the law of its being nor discharge its duties to the individual. And to this end it is necessarily invested with power to enact such measures as are adapted to secure its own authority and peace, and preserve its constituent members in safety, health and morality. Theories of the State, according as they tend to enlarge or restrict the legitimate sphere of its functions and actions, will create theories as to the proper limitations of the police power. But its existence, in a measure proportional to the rights and duties it is to guard, is implied in the recognition of the State as a factor in law and civilization. 'It is a power,' as has been well said, 'essential to self-preservation, and exists necessarily in every well-organized community. It is indeed the law of nature, and is possessed by man in his individual capacity.' For these reasons it appears that the nature and authority of the police power are best described by the maxim, '*salus populi suprema lex*,' while the principle '*sic utere tuo ut alienum non laedas*' furnishes in most cases a convenient rule for its application." Mr. Chief Justice Waite, in *Stone* v. *Mississippi*, 101 U. S., 814, says: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental powers is continuing in its nature, and they are to be dealt with as the special exigencies of the government may require. Government is organized with a view to their preservation and cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself."

This honorable Court has expressly declared that neither the fourteenth amendment—broad and comprehensive as it is—nor any other amendment to the Federal Constitution was designed to interfere with the police power of the States. This doctrine was reiterated by Mr. Chief Justice Fuller in *Wilkerson* v. *Rahrer*, 140 U. S., 545.

In *Trageser* v. *Gray*, 73 Md., 250, the Court very properly said:

"We are unable to conclude that any one, citizen or alien, can acquire rights which could in any way control, impair, impede, limit or diminish the police power of a State. Such power is original, inherent and exclusive; it has never been surrendered to the general government, and never can be surrendered without imperiling the existence of civil society."

It is under this reserved and inalienable power of the State that we seek to uphold the Dispensary Act as a valid police measure. We maintain that the State may restrain, regulate or prohibit the exercise of any calling, business or pursuit that militates against the morals, health, peace, good order and safety of society. We maintain that the State may even take immediate control of such hurtful calling, and, for the purpose of restricting its baneful effects, may conduct it herself to the exclusion of her citizens. To sustain this position it is not necessary for us to contend that a State may exercise the exclusive right to any calling or occupation not hurtful in its effect upon the body politic. We need but hold that concerning a recognized subject of police surveillance, in all countries and at all times, like the manufacture, sale and use of intoxicating liquors, the Legislature, in the exercise of the powers and trusts reposed in it by the Constitution, the law of the land, and the inherent power of self-protection, may take such steps and provide such means for its regulation as in its judgment the control or suppression of the evil may demand

In *Crowley* v. *Christiansen*, 137 U. S., 90–92, in discussing the extent of these police regulations, the Court says:

" For the pursuit of any lawful trade or business the law imposes similar conditions. Regulations respecting them are almost infinite, varying with the nature of the business. Some occupations by the noise made in their pursuit, some by the odors they engender, and some by the dangers accompanying them, require regulations as to the locality in which they shall be conducted. Some by the dangerous character of the articles used, manufactured or sold require also special qualifications in the parties permitted to use, manufacture or sell them. All this is but common knowledge, and would hardly be mentioned were it not for the position often taken and vehemently pressed, that there is something wrong in principle and objectionable in similar restrictions when applied to the business of selling by retail, in small quantities, spirituous and intoxicating liquors. It is urged that, as the liquors are used as a beverage, and the injury following them, if taken in excess, is voluntarily inflicted and is confined to the party offending, their sale should be without restrictions, the contention being that what a man shall drink, equally with what he shall eat, is not properly matter for legislation. There is in this position an assumption of a fact that does not exist—that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls on him in his health, which the habit undermines; in his morals, which it weakens, and in the self-abasement which it creates. But, as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram-shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the Courts of every State, considered as the proper subject of legislative regulation. Not only may a license be exacted from a keeper of a saloon before a glass of his liquors can thus be disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold and the hours of the day and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of a State or a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or permitted, under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on and to issue licenses for that purpose. It is a matter of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State; nor is it one which can be brought under the cognizance of the Courts of the United States."

It can no longer be doubted that the extent to which the traffic in intoxicating liquors may be regulated by statute is wholly a matter of legislative discretion within constitutional limits.

Mr. Tiedeman in his work on Police Limitation, p. 318, says: "There is no doubt that a trade or occupation which is inherently and necessarily injurious to society may be prohibited altogether; and it does not seem to be questioned that the prosecution of such a business may be assumed by the government and managed by it as a monoply. If it is lawful for the State to prohibit a particular business altogether, or to make a government monopoly of it, the pursuit of such a business would, if permitted to any one, be a privilege or franchise, and, like any other franchise, may be exclusive. This is but a logical consequence of the admission that the State has the power to prohibit the trade altogether. Such an admission is fatal to a resistance of the power to make it a monopoly."

But no question can be made here under the Statute of Monopolies. A monopoly is a grant by the State to one or a few, for their sole benefit, of a right formerly common to all. An exercise by the State of the exclusive right to engage in such a calling for the benefit of all her citizens has none of the elements of a monopoly. It is the State holding the right for the benefit of all instead of granting the right to one or a few to the exclusion of others. (See *Slaughter House Cases*, 16 Wall., 66; *State* v. *Brennan's Liquors*, 25 Conn., 278; *Lincoln* v. *Smith*, 27 Vt., 328; *Bartemeyer* v. *Iowa*, 18 Wall., 129.)

His Honor Judge Simonton, in the case of *Lowenstein* v. *Evans et al.*, 69 Fed. Rep., 908, expressly decided that the Dispensary Act does not create a monopoly within the meaning of the Federal statute.

It is not for the Courts to set the limits to legislative power, "nor can they hold a law to be void which is not prohibited by the Constitution because in their opinion it violates the spirit of our institutions or impairs any of those rights which it is the object of a free government to protect; nor can they declare it to be unconstitutional because it is morally wrong and unjust. The Constitution itself contains all the inhibitions that exist against legislative action. If the Courts can add to these, they alter this fundamental instrument, which they are not authorized to do, and themselves become aggressors, and violate both letter and spirit of that organic law as grossly as the Legislature could. If the Courts can add to the things that are inhibited, they can also take away. If they can change at all, they can destroy entirely. They cannot supply what they may suppose is a *casus omissus* in the Constitution, nor declare unconstitutional an Act of the Legislature which they conceive wrong, injurious or oppressive.

"The judicial power is also limited, and they are confined to the duty of ascertaining whether any laws do violate the Constitution. It is not for the judiciary or the executive departments to inquire whether the Legislature has violated the genius of the government or the general principles of liberty, or the rights of man, or whether these acts are wise or expedient, but only whether the Legislature has transcended the limits prescribed by the fundamental law."

(See Potter's Dwarris on Stat. and Cons., pp. 362–3; Cooley's Const. Limit. (6 Ed.), p. 197; 3 Am. and Eng. En. of Law, p. 673; Endlich on Interpretation of Statutes, p. 8, § 5; Sedgwick on Stat. and Const. Law, p. 80; *Sharpless* v. *Mayor of Philadelphia*, 21 Penn. St. Rep., 160; *Reeves* v. *Corning*, 51 Fed., 774.)

A host of other cases sustain the position of Mr. Justice Wright in *Morrison* v. *Springer*, 10 Iowa, 304, that the Court will declare a law unconstitutional only when it is clearly, palpably and plainly inconsistent with the provisions of that instrument."

Mr. Justice Baldwin of the Supreme Court of the United States, in *Bennett* v. *Bogg*, 1 Bald., 74, uses this language:

"We cannot declare a legislative Act void because it conflicts with our opinions of policy, expediency or justice. We are not the guardians of the rights of the people of the State unless they are secured by some Constitutional provision which comes within our judicial cognizance. The remedy for unwise or oppressive legislation, within Constitutional bounds, is by appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but the Courts cannot assume their rights."

This Court is bound to indulge every possible presumption in favor of the validity of a statute.—*Sinking Fund Cases*, 99 U. S., 700.

In view of these settled doctrines and principles, let us examine the Dispensary Law. Is it a police measure? The intention of the Legislature must be gathered from the words of the Act. The title of the Act is: "An Act to further declare the law in reference to, and further regulate the use, sale, consumption, transportation and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same." The Act declares all such liquors "except when bought from a State officer authorized to sell the same, or in possession of one," to be "contraband and against the morals, good health and safety of the State, etc." The Governor, the Secretary of State and the Comptroller General, *ex-officio*, constitute a State Board of Control to carry out the provisions of the Act. The Act provides for the appointment of a State Commissioner, who shall purchase all liquors for lawful sale and use within the State and furnish the same to such persons as may be appointed to dispense it. The State Commissioner is required to execute a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties. All liquors are bought and sold under rules and regulations made by the State Board of Control and must be tested by the chemist and declared pure before sale by the County Dispensers. The State Board of Control shall appoint, in each County, a County Board of Control, composed of three citizens, and the County Board shall appoint certain officers known as

"County Dispensers." The Dispensers are permitted to sell only by the package, which cannot be broken, nor the liquor drunk, on the premises where it is sold. Speaking of these provisions, Mr. Justice Gary, in delivering the opinion of the Supreme Court of South Carolina in *State ex rel. George* v. *City Council of Aiken*, 42 S. C., 222, says: "The Act shows that the Legislature had in view the protection of the "morals, good health and safety of the State" in dealing with this question. Many safeguards are thrown around the sale of the liquor. The Commissioner is to be an abstainer from intoxicants. The liquor is to be tested by the chemist and declared to be pure. The liquor is to be sold only by the package, which cannot be opened nor drunk where sold. The sales can only be made in daytime. Persons cannot be appointed on the County Board of Control who are addicted to the use of intoxicating liquors. No person can be appointed a County Dispenser who has ever been adjudged guilty of violating the law relating to intoxicating liquors, nor who is keeper of a restaurant or a place of public amusement, nor who is addicted to the use of intoxicating liquors as a beverage. The County Dispenser shall execute a bond in the sum of $3,000, upon which suit for damages may be brought for a violation of the provisions of the Act by a wife, child, parent, guardian, employer, or other person. A majority of the voters in a township may prevent the establishment of a dispensary. The County Dispenser shall take an oath therein prescribed. A printed or written request must be presented for permission to purchase. The sale shall not be made to a minor, a person intoxicated, a person in the habit of drinking to excess, nor to a person unknown to the Dispenser. It prevents the establishment of club rooms where liquors are used. One of the beneficial results of the law is brought about by selling only for cash. It has been argued that there was no necessity for this regulation by the State; that the same results could be accomplished by allowing private individuals to carry on the traffic, and for this reason the Act is null and void. * * *

"The Dispensary Act itself is an outgrowth of a dissatisfaction on the part of the people with the manner in which the police power, when delegated, was abused. The law was enacted in self-defense, and vindicates the wisdom of our forefathers in allowing wide legislative discretion in the exercise of the police power. There is nothing in the Act showing that its primary object is the raising of revenue. The sales are to be made under rules adopted by the County Board of Control and approved by the State Board of Control. It is certainly possible for the objects of the Act to be carried into effect under proper rules adopted for that purpose. It is within the power of the Boards of Control to eliminate the profit feature altogether. It is presumed that public officials will discharge the duties of office in a lawful manner until the contrary appears. When a case is brought before this Court contesting the legality of the rules adopted by the Boards of Control, it will be time enough then for this Court to pass upon the revenue feature. Suffice it to say no such question is now before us."

As far back as *Bartemeyer* v. *Iowa*, 18 Wall., 129 (1873), it was held that a State law prohibiting the manufacture and sale of intoxicating liquors *was not repugnant to the Constitution of the United States.*

In *Foster* v. *Kansas*, 112 U. S., 201 (1884), the same doctrine was held, confirming the case above.

Beer Co. v. *Mass.*, 97 U. S., 25 (1877), held same thing. These cases were followed by the determination that legislation by a State permitting the manufacture, within her limits, of intoxicating liquors, to be there sold and bartered for *general use as a beverage*, did not necessarily infringe any rights, privileges or immunities secured by the Constitution of the United States; and that under the police power of the State it was competent for the Legislature to determine primarily what measures were appropriate or needful for the protection of the public morals, the public health, or the public safety.

Then, in 1887, in the case of *Bowman* v. *R. R. Co.*, 125 U. S., 465, it was held that a law of Iowa forbidding the bringing into the State from other States of intoxicating liquors without a certificate, as therein required, was a regulation of commerce among the States, and was void as being repugnant to the Constitution, such Statute not being an inspection law, or a quarantine law, or a sanitary measure, and therefore not a legitimate exercise of the police power of the State.

Then came the decision of *Leisy* v. *Harden*, 135 U. S., 100, in which it was held that a party had the right under the Inter-State Commerce Acts to import intoxicating liquor into the State, and the importer had the right to sell the imported liquor in the State *so long as it remained in the original package.*

This case induced the passage of the Wilson Act.

In re. Rahrer, 140 U. S., the constitutionality of this Act was assailed, but it was sustained by the Court.

The Wilson Act is the controlling Act now, and by it Congress has provided that upon the arrival of liquors within the State, they become subject to the police power of the State, *to the same extent and in the same manner as though such liquors had been produced in the State.*

While this Act did not add to the police power of the State, it did give expression to the will of Congress that a State could control intoxicating liquors as articles of commerce upon their arrival in the State, no matter where manufactured or from where imported, and Congress thus relinquished any power as to this article, which had been conferred by the Constitution of the United States, upon its arrival in such State.

The complainant alleges that the liquors in question in this case were seized after they reached their destination in Charleston, S. C. They were liable to seizure under the Wilson Bill upon their arrival in the State. His Honor Judge Simonton held *In Re Langford*, 57 Fed. Rep., 570: that when they reached their destination they had arrived within the State, and were subject to the police power.

But it is contended by the complainant that while he had no right as a citizen to bring intoxicating liquors into the State for sale, he had the right to bring them in for his own use.

The Dispensary Law prohibits this. In *Cantini* v. *Tillman et al.*, 54 Fed. Rep., 974: the United States Circuit Judge held that the provision of the Dispensary Law prohibiting a person from bringing liquors into the State for use was constitutional.

Besides the Wilson Act makes all liquors upon their arrival in the State, for sale, use and consumption, subject to the laws of the State passed in the exercise of the police power.

But it is contended in this case that the Dispensary Law is in contravention of the Inter-State Commerce Acts, because it discriminates against products of other States and against citizens of other States.

1st. In that it allows Dispensaries to sell intoxicating liquor, while citizens from other States are not allowed to send it into the State for sale.

2nd. In that it discriminates against intoxicating liquors, the product of other States, by prohibiting their introduction into the State for sale or use.

The Act does authorize the sale of ales, wines and liquors by the State, and does prohibit all citizens of this State, as well as citizens of other States, from bringing them into the State for sale or use.

The Act does allow the Commissioner for the State to buy liquors outside the State, and does prohibit other persons from buying and bringing them into the State.

But we maintain that this is a legitimate exercise of the police power, and does not in any way regulate commerce between the States, and is not a discrimination against products or citizens of other States. It places citizens and products of this State on an equal footing with those of other States. Domestic liquors and foreign liquors are are alike subject to the provision of the law. While citizens of other States are forbidden to sell liquors within this State, the prohibition extends to citizens of this State as well; and while a citizen is prohibited from importing liquor, he is likewise prohibited from purchasing within the State any liquors not previously analyzed by the Chemist and sold by the proper officers of the State.

The Act may remotely affect commerce, but it does not interfere with or regulate it by discrimination or otherwise.

"So long as Congress does not pass any laws to regulate commerce among the several States, it thereby indicates its will that such commerce shall be free and untrammeled, and that any regulation of the subject by the States, except in matters of local concern only, is repugnant to such freedom."— *Welton* v. *Missouri*, 91 U. S., 455; *Brown* v. *Houston*, 114 U. S., 622; *Walling* v. *Michigan*, 116 U. S., 455.

"The reason that Congress is to regulate inter-State commerce is, that if this was not done by Congress there would be no security against conflicting regulations of different States, each discriminating in favor of its own products or citizens and against the products and citizens of other States."—*Mobile* v. *Kimball*, 102 U. S., 691.

The commercial power of Congress continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it even after it has entered the State from any burdens imposed upon it on that account. It would seem to be the received doctrine that this protection of the goods from all State control while in transit, and from discrimination at all times, is all that Congress can or need undertake to secure in the matter. After the goods have been sent from one State to another for *sale*, or in consequence of a sale, and have reached their destination, they become part of the general property of the State, and are subject to its regulations and taxes just as all other property is, *provided only* that there be no discrimination against them by reason of their extra State origin.— *Woodruff* v. *Parham*, 8 Wall, 123; *Machine Co.* v. *Gage*, 100 U. S., 676.

Before the passage of the Wilson Act, it was held that the importation of intoxicating liquors from other States might be subjected to a license tax.—*Hinson* v. *Lott*, 8 Wall., (U. S.,) 148.

It was also held that the importation of liquors might be prohibited, provided domestic liquors were subjected to the same restriction.—*Bartemeyer* v. *Iowa*, *supra* ; *Beer Co.* v. *Mass.*, 97 U. S., 25.

In the case of *Walling* v. *Michigan*, 116 U. S., 446, it was held that a law which imposed different taxes upon the business of selling or soliciting the sale of intoxicating liquors, according as the liquors were manufactured within the State or were to be sent from another State, was in conflict with the Inter-State Commerce Acts of Congress and unconstitutional.

In the case of *Plumley* v. *Massachusetts*, 155 U. S., 461, it was held that a law of Massachusetts which prohibited the importation of oleomargarine into the State was not in conflict with the clause of the Constitution investing Congress with the power to regulate commerce among the several States. The Justice, after examining various cases, and among them *Walling* v. *Michigan*, *supra*, said :

"If there be any subject over which it would seem the States ought to have plenary control and the power to legislate, in respect to which it ought not to be supposed was intended to be surrendered to the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may indeed indirectly or incidentally affect the trade in such products transported from one State to another. But that circumstance does not show that laws of the character alluded to are inconsistent with the power to regulate commerce among the States."

For, as was said in *Shulock* v. *Alby*, 93 U. S., 103:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislation on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation in a variety of ways may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. * * * * * And it may be said generally that the legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or sea, or engaged in commerce, foreign or inter-State, or in any other pursuit."

In this case, *Leisy* v. *Harden*, 135 U. S., 100, is restricted in its operation by the Court, and the following quotation is made from it to explain the doctrine held in that case:

"The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, is a power originally and always belonging to the States, not surrendered by them to the general government nor directly restrained by the Constitution of the United States, and essentially exclusive, and it is not to be doubted that the power to make the ordinary regulations of police remains with the individual States and cannot be assumed by the national government."

In the same case the Justice says:

"In none of the cases stated is there to be found a suggestion or intimation that the Constitution of the United States took from the States the power of preventing deception and fraud in the sale, within their respective limits, of articles, in whatever State manufactured, or that that instrument secured to any one the privilege of committing a wrong against society."

In the dissenting opinion in this case by Mr. Chief Justice Fuller, it is manifest that he considered this case as a modification of the doctrine laid down in the preceding cases. He says:

"The right to import, export or sell oleomargarine in the original package, under the regulations prescribed by Congress, cannot be inhibited by such legislation as that before us. Fluctuation in decision in respect of so vital a power as that to regulate commerce among the several States is to be deprecated, and the opinion and judgment in this case seems to me clearly inconsistent with settled principles."

In the case of *Pittsburg Coal Co.* v. *Louisiana*, 156 U. S., 590, a law of Louisiana which required all boats bringing coal into the State from other States to be gauged before sold was held to be a "legitimate exercise of the police power, and not in conflict with the clause of United States Constitution relating to inter-State commerce. The Justice delivering the opinion of the Court said:

"These provisions are properly to be regarded as a part of those innumerable police regulations for the convenience and comfort of its inhabitants in the conduct of their business. They do not add to the increase or to the diminution of the productions of the State or to the facility of their transportation. They may in some cases in a slight degree affect commerce, but not in such an extent or sense as to be properly designated as regulation of commerce."

In case of *Pittsburg Coal Co.* v. *Bates*, 156 U. S., 577, as to importation of coal into Louisiana, it was held that it was liable to the tax as soon as it reached its destination—while afloat on barges on the Mississippi River—*for the purpose of use or sale.*

In the case of *Hennington* v. *State of Georgia*, Supreme Court Reporter for 15th June, 1896, page 1091, it was held by this Court that a statute of Georgia prohibiting, under penalties, the running of freight trains on Sunday in that State was a lawful exercise of the police power of the State, and therefore constitutional.

In *Western Union Telegraph Co.* v. *James*, 162 U. S., 662, the Justice delivering the opinion of the Court said: "While it is important that commerce between the States should be unembarrassed by vexatious State regulations regarding it, yet, on the other hand, there are many occasions when the police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of those engaged in inter-State commerce."

In the light of these cases, we submit that the Dispensary Law is a legitimate exercise of the police power.

We further submit:

1st.—The law does not discriminate against liquors the products of other States, but makes the liquors produced in this State, as well as those imported, subject to it.

Under the Wilson Act of Congress, liquors imported from other States upon their arrival become subject to the police power, and if liquors manufactured in the State are put upon the same footing there is no discrimination against them on account of their extra-State origin.

2nd.—The law does not discriminate against the citizens of other States. Citizens of this State are put on an equality with them. None of them can sell intoxicating liquors. It is true the State sells, but none of her citizens can do so.

3rd.—The law does require her citizens to buy from Dispensaries, but no citizen from other States is inhibited from doing so.

There is no discrimination in the law against citizens or products of other States, as such, and because they are citizens and products of other States, but the object is to protect the public morals, public health and public safety. It is not the intention of the law to regulate inter-State commerce, but to protect the people of the State.

But it may be said that while the State sells liquors to her own citizens she cannot prohibit the introduction of liquors from other States upon the ground that they are deleterious and for the purpose of protecting her citizens from fraud and deception.

The provision in the Act requiring all liquors sold by the Dispensaries to undergo an analysis and their purity to be certified sufficiently answers this objection.

Then we maintain that the complainant is denied no right, privilege or immunity secured by the Constitution or laws of the United States, and no Federal question arises in this action. The simple averment in the bill that a Federal question is presented is not sufficient.

In *New Orleans Waterworks* v. *N. O.*, 142 U. S., 79, it was held:

"The bare averment of a Federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must be at least color of ground for each averment, otherwise a Federal question might be set up in almost any case and the jurisdiction of this Court invoked simply for the purpose of delay."

In *Hamblin* v. *Land Co.*, 147 U. S., 532, held:

"A real and not a fictitious Federal question is essential to the jurisdiction of this Court."

If there is no Federal question involved in the proceeding, the Circuit Court exceeded its jurisdiction in making the order of injunction.

With the utmost deference, we submit that the vice in the position of complainant's solicitor is the assumption by him that the Dispensary Law directly, or by its necessary operation, discriminates against the citizens and products of other States in favor of the citizens and products of South Carolina. With the greatest respect we submit that his Honor the Circuit Judge has fallen into the same error. The Dispensary Act imposes no restriction upon citizens of other States that is not applicable to citizens of this State, and requires nothing of foreign products that is not required of domestic products as well. It is in this vital respect that it can be distinguished from all the State statutes which have been held void by this Court as discriminating in their effect and burdensome upon inter-State commerce. In the Court below, complainant's solicitor cited and relied upon a line of decisions of this honorable Court all of which are reviewed in the able and exhaustive opinion of Mr. Justice Gray in *Emert* v. *Missouri*, 156 U. S., 296, to which attention is respectfully asked. Without going into a detailed discussion of those cases, we would observe that, where held unconstitutional, they relate in the main to statutes enacted in the exercise of the taxing power and in which some license or tax was imposed upon products because of their ultra State origin. Those not in this category are cases in which State statutes required some burdensome inspection of foreign products to which domestic products were not subjected. The fundamental error is in assuming that the Dispensary Act is within the purview of either line of decisions.

His Honor the Circuit Judge in his brief opinion cites but three cases to support his conclusions. (See Transcript of Record, folio 48.) The first is *Walling* v. *Michigan*, which he says was cited and approved in *Plumley* v. *Massachusetts*, 155 U. S., 471. The only other citation is *Emert* v. *Missouri*, to which we have referred above. Again, with the greatest respect, we would urge that none of these cases supports his Honor's position. We regret that his Honor did not specify the sections or provisions of the law in which he finds discrimination. He says: "It is not necessary to go into a minute and detailed examination into all the provisions of the Dispensary Law, nor to determine whether all these provisions are or are not in the exercise of the police power. It is sufficient for the purposes of this case to say that in so far as the Dispensary Law forbids a citizen to purchase in other States and to import into this State alcoholic liquors for his own use and consumption, the product of other States, it discriminates against the products of other States. Such discrimination cannot be made under the guise of the police power." (See Transcript, folio 48.)

If the fact were true, the conclusion of law would follow. But therein lies the error. How does it discriminate? No tax, no burden, no exaction, no requirement is placed upon foreign liquors from which domestic liquors are privileged. His law is good, but his facts are bad. This we submit with the utmost respect.

The second alleged discrimination his Honor describes as follows: "And, further, in so far as this Act permits the chief dispenser to purchase in other States alcoholic liquors and to import them into this State for the purpose of selling them for use and consumption at retail within the State, and forbids all other persons from so purchasing and importing for their individual use and consumption, it discriminates against all other citizens of the State." (See Transcript, folio 48.)

We presume that by "chief dispenser," his Honor refers to the State Commissioner provided for in the Dispensary Act. The comparison is incomplete. His Honor would seem to argue that because a right is given to the State Commissioner it should be extended to all the citizens of the State. The proposition is fallacious in more than one respect. In the first place, what is permittted to the State Commissioner, as an officer, is to purchase liquors and import them into this State *for sale.* Surely it would not be contended that all citizens should be allowed to do likewise, for it is now settled beyond cavil that the Federal Constitution guarantees no right to sell liquor. In the next place all the duties imposed upon, and rights granted to, the State Commissioner are by reason of his office. His acts, within the limit of the law, are the acts of the State herself. The State may do that which by her laws the citizen is forbidden to do. By her laws, she forbids the taking of human life, and yet in the enforcement of those laws she takes the life of the slayer of his fellow man. Lastly, the proposition is fallacious in assuming that the importation by a citizen for his personal use is in any respect similar to the importation by the State Commissioner. The one is the act of the citizen, the other of the sovereign. The one is importation for personal use, the other importation for sale under strict police surveillance. While the Fourteenth Amendment guarantees to every person "the equal protection of the laws," it would be absurd to urge that it or any other provision of the Federal Constitution requires a sovereign State to yield to all her citizens every right which she exercises.

The third alleged discrimination is stated by his Honor as follows: "It also makes a discrimination against all persons in the trade in other States who are not patronized by the State Dispenser, forbidding them to seek customers within the State and to enjoy a commercial intercourse secured to others in this State." (See Transcript, folio 48.) No disrespect is meant when we say but to state the proposition is to show the fallacy in it. The State Commissioner is permitted to purchase in the open markets of the world, his only restriction being that he is required to purchase and furnish to County dispensers liquors that are chemically pure. The law excludes no dealer or class of dealers. All are allowed to compete for the business, and those who fail to secure it by reason of inferior goods or higher prices can find nothing in the Act of which to complain. They are similarly situated to all those merchants who compete for the business of the various penal and charitable institutions in the State. True, as his Honor suggests, they are forbidden "to seek customers within the State," but we cannot concur in his further statement that they are forbidden "to enjoy a commercial intercourse secured to others in this State." Those who sell to the State Commissioner and those who do not are all on all-fours so far as seeking other customers within the State is concerned. They are all prohibited alike, and that whether they be citizens of this State or of another State. Then, pray, where is the "commercial intercourse secured to others," or the discrimination against anybody?

The intention of the General Assembly, as is evident from the general scope and detailed provisions of the Dispensary Act, was to protect the public health, public morals and public peace of the State, and not to burden or regulate inter-State commerce. We are pleased to note that some of the late cases indicate a modification by this honorable Court of views expressed in earlier cases as to the extent to which State legislatures may enact police regulations. Changed conditions, industrial development and more enlightened thought in this country have necessitated progressive exercise of the police power in the solution of social and governmental problems. The Dispensary Act is an example of legislation in this direction. It is difficult to conceive of any law enacted in exercise of the police power that does not affect inter-State commerce, and in every instance the question is, does it affect commerce to the extent of its regulation? We repeat, the Dispensary Act is not directed against commerce or any of its regulations, but relates to the rights, duties and liabilities of citizens, and only incidentally and remotely affects the operations of commerce. Such laws have uniformly been held valid, and upon this principle we seek to uphold the Act.

FIFTH PROPOSITION.

The Circuit Court, if warranted in making an order of injunction at all, was not authorized to grant a perpetual injunction to restrain other officers than those named in the bill, nor was it authorized to restrain them from seizing ales, wines and liquors imported into the State by others than James Donaid, the complainant in the bill.

In the case of *Iverson* v. *Harris*, 7 Vesey, 256, Lord Eldon thus laid down the English Chancery rule: "The Court has adhered closely to the principle that you cannot have an injunction except against a party to the suit. Upon a review of all the cases, I think the practice of granting an injunction against a creditor who is not a party is wrong. The Court has no right to grant an injunction against a person whom they have not brought or attempted to bring before the Court."

In *Fellows* v. *Fellows*, 4 Johnson Ch., 25, Chancellor Kent announced the same principle upon the authority of the case of *Iverson* v. *Harris*, *supra*.

It is a well settled general rule, that the Court has no right to grant an injunction against a person who is not a party to the suit. The exceptions to this rule consist either of cases when the party enjoined is the mere solicitor or agent or servant of a party to the suit having no rights involved in the controversy, or when the right has been already determined.—*Schalk* v. *Smith*, 14 N. J. E., 268.

In case of *ex parte Lemon*, 64 Fed. Rep., 325, held: "It is not necessary that one should be a party to the suit in which an injunction issues in order to render him liable to punishment for a violation of it. Any person having notice that an order has been made against a party to the suit who aids and assists that party in its violation is as much amenable to proceedings for contempt as if he were a party named in the record. This rule is of peculiar application when the actual party is a corporation, for in such case the act enjoined, if done at all, must be done by some officer, agent or servant to whose province the particular act relates."

Same doctrine held in *U. S.* v. *Alger*, 62 Fed. Rep., 824, and *Garrety Distilling Co.* v. *Western Distilling Co.*, 42 Fed. Rep., 96.

In case of *U. S.* v. *Debs*, 64 Fed. Rep., 741, held: "That parties and their co-conspirators, not named in the bill, could be attached for contempt for violating order of injunction. This was under the Act of Congress of July, 1890, authorizing expressly the Circuit Court of United States to enjoin persons entering into contracts, combinations and conspiracies to defeat inter-State commerce."

"One not a party to a suit in which an injunction has been issued, and to whom such injunction is not directed, cannot be held in contempt or be punished for the violation of the writ, although the act be illegal in itself."—Beach on Ins., Sec. 256.

Only persons to whom the injunction was directed and their agents and servants can be punished for violating it.—Beach on Ins., Sec. 268.

But as seen, *supra*, in case of *U. S.* v. *Alger*, it has been extended so as to include all who aid and abet in any way the parties to the bill.

In the case of *U. S.* v. *Elliott*, 64 Fed. Rep. 35: held that co-conspirators with any of the parties to the bill were bound by the order of injunction, and could be punished for disobedience of it.

In all of the above cases in which orders of injunction were granted, charges of aiding and abetting and conspiring with parties were made in the bills. None of these cases apply to the case at bar.

Equity Rule 48 of the United States Circuit Court fixes the practice. It is as follows: "When the parties on either side are very numerous, and cannot without manifest inconvenience and oppressive delays in the suit be brought before it, the Court, in its discretion, may dispense with making all these parties, and proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and defendants in the suit properly before it; but in such cases the decree shall be without prejudice to the rights and claims of all the absent parties."

In *Ayres* v. *Carver*, 17 How., U. S., 591: held suits may be brought against one or more of a class. It is proper, however, to name all of the class in the title to the bill, and then have the Court select some of them to be sued and to defend for the rest. "The general rule in equity, in accordance with the fundamental principles of justice, is, that all persons interested in the object of a suit, and whose rights will be directly affected by the decree, must be made parties to the suit. Exceptions to this rule have been admitted from considerations of necessity, or of paramount convenience, when some of the persons interested are out of the jurisdiction, or not in being, or where the persons interested are too numerous to be all brought in. But in all such cases there must be such parties before the Court as to insure a fair trial of the issue in behalf of all."—*McArthur* v. *Scott*, 113 U. S., 392. In case of *McArthur* v. *Scott*, *supra*, also held: "And when a suit is brought by or against a few individuals as representing a numerous class, that fact must be alleged of record, so as to present to the Court the question whether sufficient parties are before it to properly represent the rights of all."

The contention is that the complainant in his bill did not make sufficient allegations to justify the Court in granting an order of injunction binding any parties to the bill except the four constables named, and that the Court was without jurisdiction in the case as to all other officers of the State of South Carolina, and the order was, therefore, void.

And it is further contended that the order of injunction, in so far as it restrained the defendants from seizing ales, wines and liquors of others besides James Donald, was void.

Suits may be brought by a complainant on behalf of himself and others of like plight.

When one or more thus file a bill on behalf of themselves and others similarly interested, they must state in the title of their bill that they so sue, and show that the others are numerous or unknown.—*Hoe* v. *Wilson*, 9 Wall., 501. Any of the others of a class have the right to join with complainants at any time upon their paying their share of the costs and counsel fees.—*Ex parte Jordan*, 94 U. S., 248.

In case of *Green* v. *Mills*, 16 C. C. A. Reports, 529, Judge Hughes says: "So far as the rights of the individual complainant in the bill were concerned, it may have been competent for the Court to grant individual relief. The Supreme Court of the United States the other day granted relief from the payment of an income tax to the individual complainant in the case before it, but it went no further. On the authority of *Mississippi* v. *Johnson*, *supra*, we may assume that it would not have entertained a bill for enjoining revenue officers of the Government from collecting income taxes generally. The judicial power covered the right to grant individual relief, but did not extend to the general power of repealing the law imposing the tax as to the entire public. I repeat that in the case at bar it may have been competent for the Court to grant individual relief. But the bill asked more. It asked similar relief for all citizens of the country situated like the complainant."

Upon the principles announced in these cases, we submit that the Circuit Court was not warranted in enjoining other officers than those named in the bill, and in extending the injunction to the seizure of liquors imported by other persons than James Donald, the complainant.

REMARKS AS TO SUGGESTION FILED.

The executive officers of the State of South Carolina are equally as anxious as the complainant herein to have the legal issues raised in this cause finally adjudicated by this honorable Court. With a view to securing a final decision, and feeling that it is just to the Court as well as to parties litigant that the present method of operating the South Carolina Dispensary should be fully understood, a suggestion has been submitted calling the attention of the Court to the recent enactment of the General Assembly of South Carolina relative to the Dispensary. The Dispensary system, as a solution of the liquor question, is yet in its infancy, and the State Legislature in passing the Act of 1896 endeavored to perfect the business details of the institution. At the same time the inspection feature of the law was materially changed. It is to this alteration particularly that we invite attention, and respectfully ask that the Court, if it deem proper, consider its provisions in this respect as affecting the Act approved January 2nd, 1895, and the order of injunction in this case. Without discussing in detail those features of the Act, we submit that, as an inspection law, it is subject to the following principles:

1. That the States, in the exercise of the police power, may pass inspection laws which are not in their express words or operation a burden upon inter-State commerce, by

discriminating against the products or citizens of other States, and which operate equally upon products and citizens of the States themselves and citizens and products of other States.

Robbins v. *Shelby Tax District*, 120 U. S., 492.
Gibbons v. *Ogden*, 9 Wheaton, 203.
Brown v. *Maryland*, 12 Wheaton, 419.
Voight v. *Wright*, 141 U. S., 65.
Crutcher v. *Kentucky*, 111 U. S., 59.
Brummer v. *Rebman*, 138 U. S., 75.
Smith v. *Alabama*, 124 U. S., 495.
Dent v. *West Virginia*, 129 U. S., 114.
Plumley v. *Mass.*, 155 U. S., 472.

2. That the Legislature is the judge of what is against the public health, morals and safety of the State, and when in the exercise of the police power it enacts a law declaring the use of any article to be against them, it will not conflict with the ninth Article of the Constitution of the United States when it discriminates against the citizens and products of other States.

Railroad Co. v. *Husen*, 95 U. S., 465.
Crowley v. *Christiansen*, 137 U. S., 91.
Plumley v. *Mass.*, 155 U. S., 472.

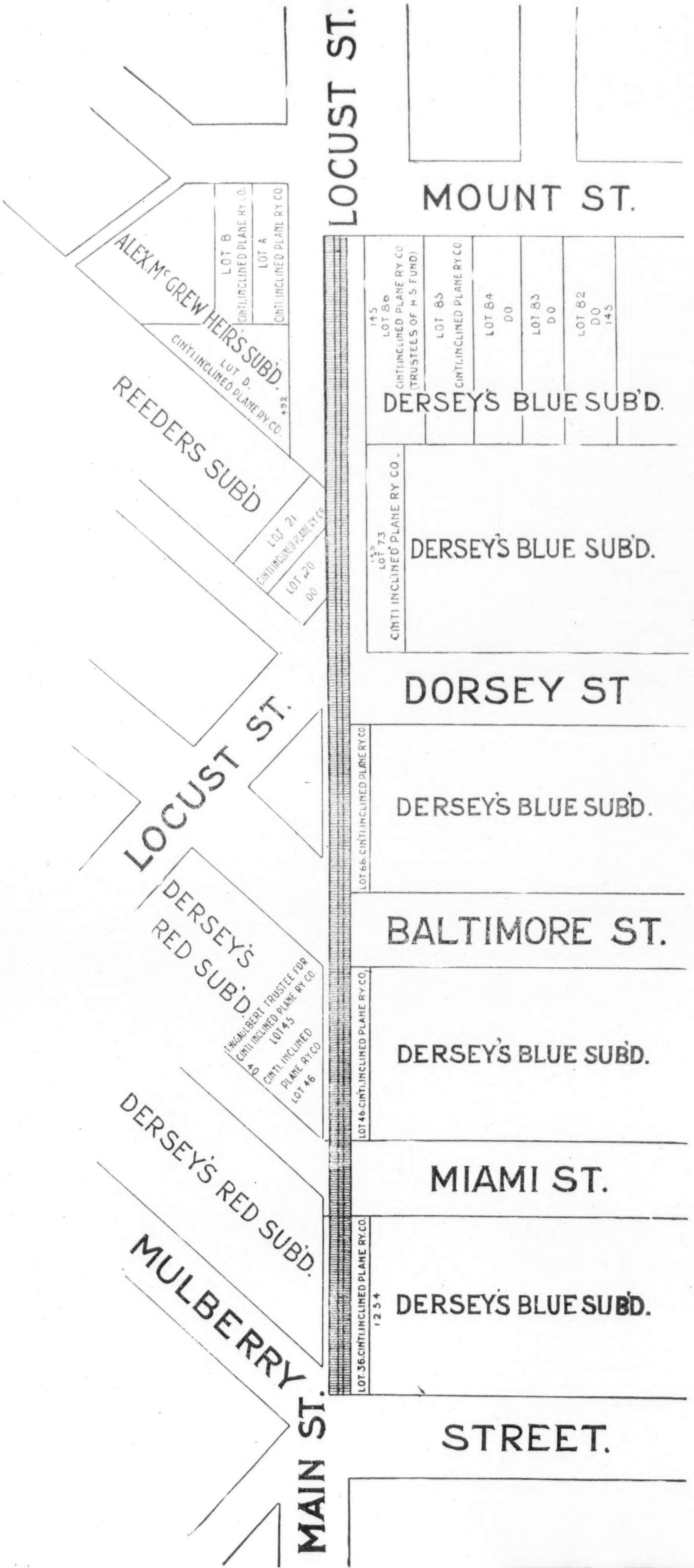
3. That the State, in the exercise of the police power, can enact laws protecting the people from the consequences of ignorance, incapacity, fraud, disease, poverty and crime.

Dent v. *West Va.*, 129 U. S., 114.
Plumley v. *Mass.*, 155 U. S., 472.
Munn v. *Barber*, 136 U. S., 313.
Brummer v. *Rebman*, 138 U. S., 78.

And it is contended that the State, in the exercise of the police power, can enact an inspection law as to intoxicating liquors, and declare impure liquors deleterious and poisonous and their use against the health, morals and safety of the people; and in passing such laws there is no regulation of commerce or burden placed upon it.

We further submit that the Dispensary Act of 1896 is not a regulation of commerce, although it may indirectly affect it, as the inspection provided by the law is not unusual and unreasonable, and does not discriminate against the citizens and products of other States.

WM. A. BARBER,
Attorney-General of S. C.,
For Appellants.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LOT B
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LOT A
CINTI.INCLINED PLANE RY.CO.
ALEX. McGREW HEIRS SUB'D.
LOT D.
CINTI.INCLINED PLANE RY.CO.
492
REEDERS SUB'D
LOT 21
CINTI.INCLINED PLANE RY.CO.
LOT 20
DO
145
LOT 86
CINTI.INCLINED PLANE RY.CO
(TRUSTEES OF H.S. FUND)
LOT 85
CINTI.INCLINED PLANE RY.CO.
LOT 84
DO
LOT 83
DO
LOT 82
DO
145
DERSEY'S BLUE SUB'D.
145
LOT 73
CINTI INCLINED PLANE RY.CO.
DERSEY'S BLUE SUB'D.
DORSEY ST
LOCUST ST.
LOT 66. CINTI. INCLINED PLANE RY.CO.
DERSEY'S BLUE SUB'D.
BALTIMORE ST.
DERSEY'S RED SUB'D.
T.W. GAULBERT TRUSTEE FOR CINTI INCLINED PLANE RY.CO.
LOT 45
40
CINTI. INCLINED PLANE RY.CO
LOT 46
LOT 46. CINTI. INCLINED PLANE RY.CO.
DERSEY'S BLUE SUB'D.
MIAMI ST.
DERSEY'S RED SUB'D.
MULBERRY
LOT. 36. CINTI. INCLINED PLANE RY.CO.
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MAIN ST.
STREET.

EXHIBIT No. 12

34(A

Libellants' Exhibit 2.

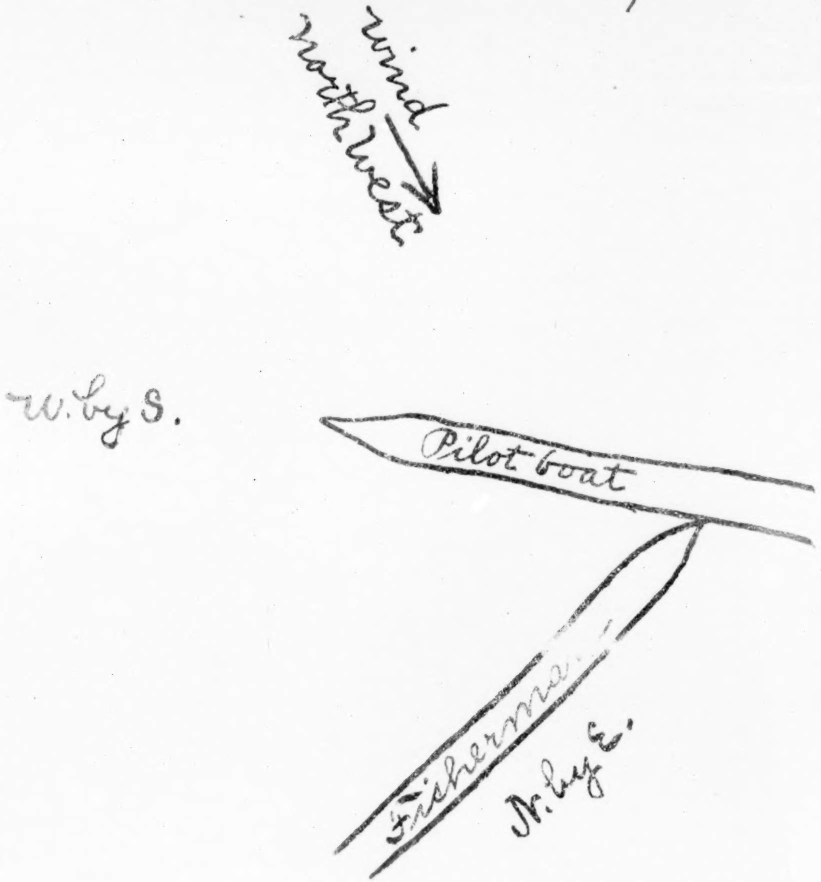


Exhibit 3.

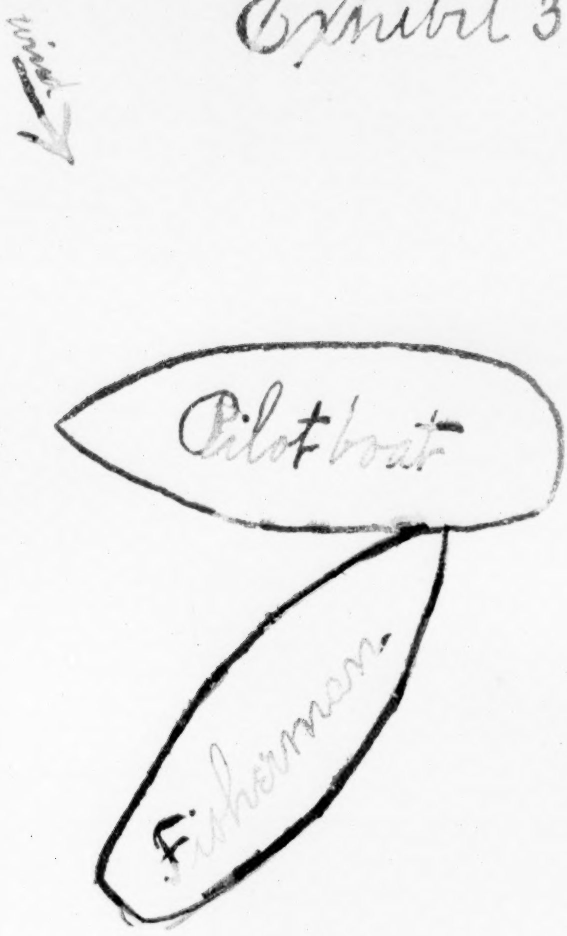
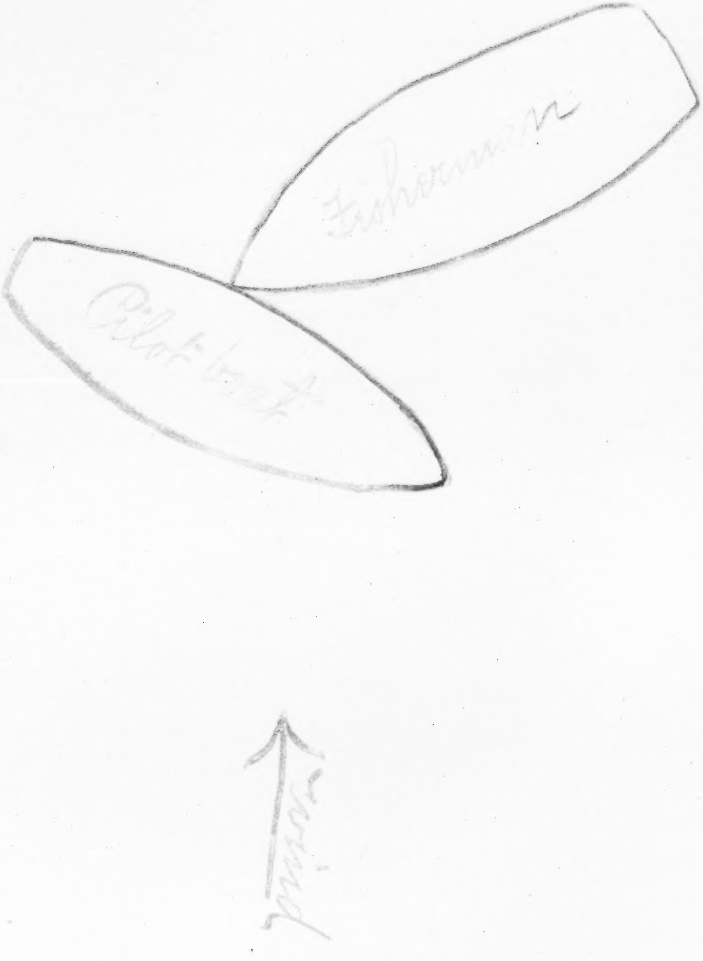


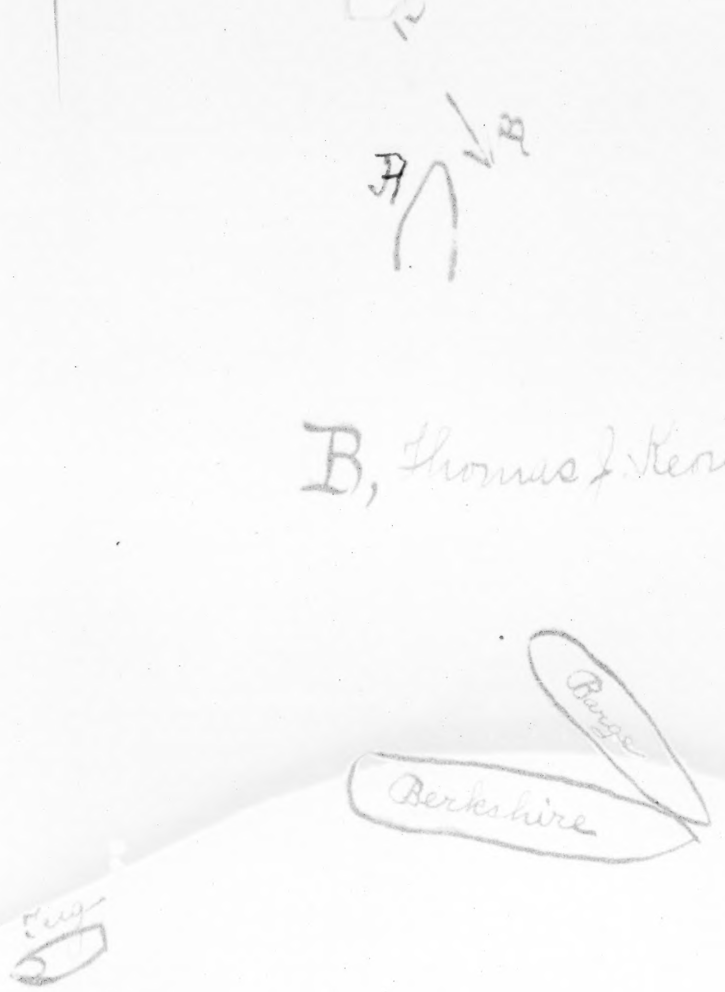
Exhibit 2
Shie[illegible])



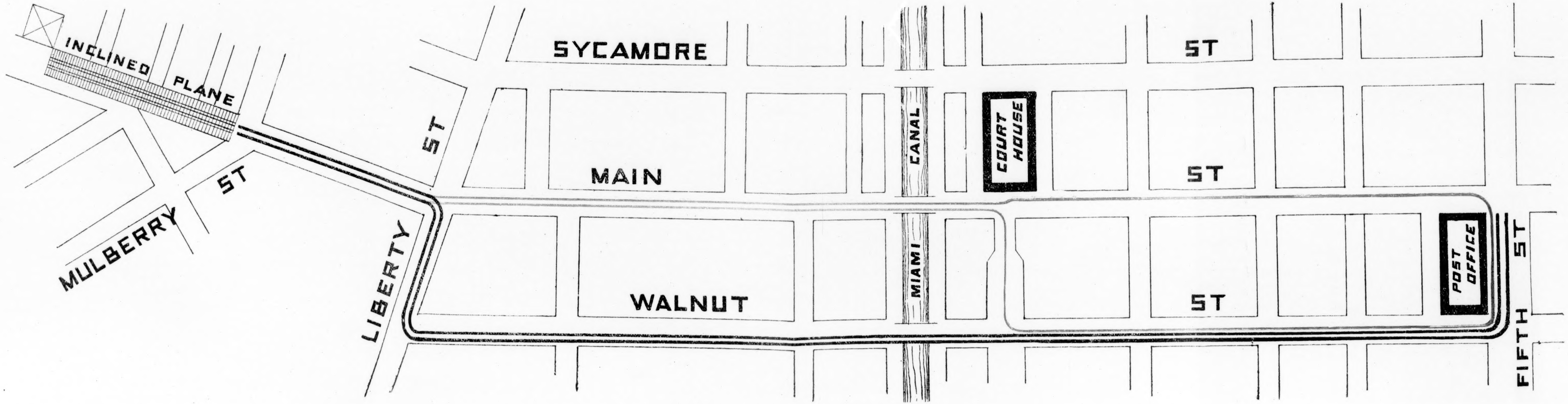
Libel nts' Exhibits.

[Put i dence, page 65.]

A omas J. Keough, F.H.



B, Thomas J. Keough, F.H.



Black shows Grant of December 1, 1871. Red shows Route 8 as used South of Incline.